BUY AMERICA

(100-61)

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

OF THE

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

MARCH 31, 1988—FEDERAL HIGHWAY ADMINISTRATION
MAY 12, 1988—URBAN MASS TRANSPORTATION ADMINISTRATION
MAY 17, 1988—U.S. ARMY CORPS OF ENGINEERS

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BUY AMERICA

(Federal Highway Administration)

THURSDAY, MARCH 31, 1988

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:00 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. Oberstar. The Subcommittee on Investigations and Oversight will come to order.

It was a little over five years ago, around 1:00 a.m., in the Capitol, as the House and Senate conferees met to iron out the last remaining item in the House-Senate Conference on the Federal Aid Highway Act Authorization. The Surface Transportation Assistance Act included a five percent increase in the fuel tax, and extended for five years, the Federal Aid Highway program. The last remaining item was debated in a little room off the Senate floor, where the House-Senate conferees were meeting.

That last item was the Buy America provision.

It was the final issue to be resolved. The Senate conferees were standing firm for elimination of the House provision which was 100 percent Buy America, and the House conferees were prepared to offer a compromise. The compromise offered was, if all the steel in the Federal Aid Highway program was to be American made steel, unless foreign steel could come in 26 percent below the American price.

The reason that percentage was picked was that just a few weeks previously, the International Trade Commission had ruled that the Japanese and European steel makers were subsidizing their exports to the United States to the tune of 26 percent below domestic market price. So, this Member picked that number out of the ITC report and offered it to the Senate conferees. Our beloved late Chairman Jim Howard was there, and colleagues Doug Applegate and John Paul Hammerschmidt. The Senate conferees swallowed hard and accepted the House offer—and we had a bill.

Today we meet to review the benefits and the effects of implementation of that provision in the Federal Aid Highway Act. This has been one of the signal victories for steel, in Federal legislation and programs, in the last six years. Buy America was an issue very vigorously promoted by the Congressional Steel Caucus, and their chairman, principal spokesman and vigorous advocate is our leadoff witness this morning: Chairman Joseph Gaydos.

This hearing is the first in a series of three hearings on the Buy America provisions, now in law, that come under the jurisdiction of the House Public Works and Transportation Committee.

We're going to hear today about the impact of that legislation on the Federal Aid Highway Program. Next month, we're going to look at the Department of Transportation's enforcement of Buy America in the mass transit program. And the final hearing of this series will be a look at how the Corps of Engineers is administering its responsibilities under the Corps Water Resources Development program and the Buy America provision in that program.

These three hearings will show a spectrum of Government agency response to the Buy America language. This will be a very good picture in the Federal Aid Highway Program; a very questionable picture in the mass transit program, where the law in fact is being circumvented; and a potentially very dangerous picture for the Buy America Act in the Corps of Engineers program, where there is deliberate evasion of the Buy America Act.

The result of these hearings, we hope, will be a new set of directions for the Federal agencies administering the Buy America Act. We want to find out what is strong and what is weak, what needs to be strengthened and what needs to be cured. How can this program be made more effective? To get to that determination, we need to know the facts.

What are the economic consequences for the steel industry, and those it employs, in the communities where steel remains. What are the consequences for the National economy and for the competitiveness of the American steel industry? We have seen some setbacks and misdirection in the administration of the Federal Buy America Act. Highway and Transit agencies have created conflicting regulatory climates.

For example, a lamppost that complies with Buy America provision if it is used in the Federal Aid Highway program, is not in compliance with Buy America provisions, if it is used on a transit project.

We cannot understand these inconsistencies. We'll try to get at why they exist, and how to cure them.

Compliance has been a mixed bag. Too often the process is operated in a kind of fishbowl, with enforcement mechanisms that leave no middle ground between "jawboning" on the one hand and contractor debarment on the other. Federal agencies that are unwilling to "jawbone" are also unwilling to put contractors out of business. There has to be a middle ground between these two extremes. We hope that the witnesses will show the committee, or offer the committee some suggestions, as to how to find that middle ground and a more effective enforcement of the Buy America language.

Industries bidding on Federal highway and transit projects have to get the unambiguous and clear message that failure to comply with Buy America will not be tolerated and will be costly to those who violate its provisions.

In the United States, highway and bridge programs consume some 2.5 million tons of steel annually. That's about four percent of all domestically produced steel. The multiplier effect is even more significant than the consumption of steel in the Federal Aid Highway program.

In new highway construction and transit programs, there is a significant multiplier effect on other industries from the Buy America provision that requires U.S. steel to be used in those programs. The Congressional Research Service, at the request of this subcommittee, indicated that in fiscal year 1988, each additional dollar spent on new highway construction and transit programs translates into some $2.36 in highway and $1.80 in direct and indirect domestic purchases, respectively. Each additional billion dollars spent on these programs generates some 51,600 more jobs for highway industries and 53,600 more for transit industries.

In other words, we are returning jobs, payroll taxes, to the domestic industry and the domestic economy.

Further, it should be noted that each million tons of steel produced domestically generates jobs that pay Social Security taxes, retirement benefits, contributions into unemployment compensation funds, and Trade Adjustment Assistance programs. Each 1 million tons of steel imported into the United States does not make that contribution. In fact, it subtracts from our Social Security, unemployment compensation and Trade Adjustment programs, and causes an outlay of dollars from the Federal Treasury to compensate for the jobs lost.

We in Congress had to be sensitive to the needs of the domestic economy and the requirements for an evenhanded and effective enforcement of the Buy America provision. That will be the purpose of these hearings today.

Mr. Oberstar. The Chair now recognizes the gentleman from Pennsylvania who has played a very, very strong and vigorous role in bringing us to the point of these hearings today.

Mr. Clinger?

Mr. Clinger. Thank you very much, Mr. Chairman.

As you've already mentioned, this is the first in a series of hearings on the Buy America provisions and its application to programs under the jurisdiction of the Public Works and Transportation Committee.

While the notion of an open market has always been a basic tenet of this Country, and we always promote the idea of free trade, this committee has long realized that many foreign corporations doing business here possess a competitive advantage over domestic corporations because of cheap labor costs and because of governmental and financial subsidies and support.

The Public Works Committee cited the unfair competitive advantage enjoyed by many foreign corporations attempting to enter the American highway and transit market as the prime motive for the inclusion of the Buy America provision in the legislation that was eventually enacted as the Surface Transportation Assistance Act of 1978. Subsequent enactments, while modifying certain aspects of the underlying legislation, have preserved this central theme in the bill.

In the decades since Buy America requirements were first applied to surface transportation projects, market saturation at home and the rising U.S. dollar made the American market appear even more attractive and led to an even further influx of foreign competitors.

This continued encroachment, along with our huge trade deficit, is why the aim of Buy America is of continuing importance and why this review is so timely.

Certainly recent problems of interpretation of the Buy America provisions and the proposed revision of the rules applied to Corps of Engineers procurements indicate that current programs, or at least the rules under which they operate, may not be as clear cut as we once thought. Today's hearing will focus on the Buy America provision of the Surface Transportation Assistance Act of 1982, as applied to the Federal Highway program.

We will hear testimony on all aspects of the legislative requirements, how those requirements are carried out by FHWA, what problems exist, and how compliance with those requirements is monitored.

We'll also hear about the impact of the program on American industry, particularly the steel industry. This is of particular interest to me and to Chairman Gaydos as representatives of major steel producing states. The testimony we receive both today and in future hearings, I hope and trust, will help us to gain a better understanding of Buy America provisions, and how those provisions might best be utilized in the future.

Mr. CLINGER. Mr. Chairman, I join you in welcoming our colleague Chairman Gaydos, a fellow Pennsylvanian, who has been such a forceful and articulate advocate for the concerns of steel and for the necessity of maintaining a strong steel production capability in this Country.

We're delighted to have you with us, Chairman Gaydos.

Mr. GAYDOS. Thank you, Mr. Clinger.

Mr. OBERSTAR. Do you have an opening statement, Mr. Towns?

Mr. TOWNS. I really don't have an opening statement as such, but I would like to welcome my colleague Congressman Gaydos from Pennsylvania, one of the most respected members of this body, here this morning.

I'd like to say that unless the Federal Government gets involved in this process, it really won't work. We have to encourage and urge them to do so, and do so right away.

Mr. OBERSTAR. Thank you, Mr. Towns.

The gentlewoman from Maryland?

Mrs. BENTLEY. Thank you, Mr. Chairman.

Mr. Chairman, I'm going to ask unanimous consent to include my whole statement. I will not repeat the parts that you and Mr. Clinger already have referred to.

Mr. OBERSTAR. Without objection. It will be included in the record this morning.

Mrs. BENTLEY. Before I welcome Mr. Gaydos—as a member of the steel caucus we have worked very closely together and I have tremendous respect for him. I hope though, Mr. Chairman, that in the next segment of our hearings you will broaden the scope beyond steel.

As you know, I've been trying to get American cement included into in the requirements. I think that this is an industry that we need to look at as well. I'd appreciate it if you'd consider that.

I want to point out that just yesterday, before the Republican Platform Committee, I was testifying on the condition of the American industrial base. That's what all of this is part of. I quoted from an article in the Wall Street Journal for March 14. That article quotes a senior Pentagon official warning that in a major conflict, we would have to subcontract the war to Japan.

I think that's a very, very frightening statement. It's shocking, but it should not be surprising, considering the impact of targeting and dumping of product by foreign producers on our domestic industries. The loss of domestic industrial capacity also means the loss of defense production capacity. The steel mill that closes down because of low demand for U.S. cars and for low demand for highways, that steel mill is also needed to make steel for tanks and planes, jeeps and trucks.

This is all part of what we've been talking about: restoring our industrial base. This fact cannot be accomplished by just one political party. This is a task that demands a commitment by both the majority and minority parties in Congress. During the 100th Congress, we are faced with a number of serious problems and one of these is a trade deficit which contributes to the weakening domestic industrial base.

I am pleased to see that along with Congressman Gaydos, we'll have representatives of the steel industry. My home Congressional district includes Bethlehem Steel's Sparrows Point plant and shipyard. In recent years, Baltimore has experienced a reduction in steel production in America.

We need to reverse industrial closures, but it does involve many, many other industries, Mr. Chairman, and we must touch on those.

Once again, Mr. Gaydos, I'm looking forward to your testimony.

[Mrs. Bentley's statement follows:]

Opening Statement of Representative Helen Delich Bentley Before the Subcommittee on Investigations and Oversight, March 31, 1988

Chairman Oberstar and Ranking Minority Member Mr. Clinger, I applaud your leadership for calling this subcommittee to review "Buy America" provisions administered by the Federal Highway Administration. Successful Implementation of these laws are critically important to the very survival of some of America's most basic industries.

Mr. Chairman, I ask that in future subcommittee hearings such as the one here today, we will focus on the many other components purchased by the U.S. Government other than steel. Steel is an important material covered by the "Buy America" provisions and must be effectively implemented, but steel is only one of the many domestic products that should be purchased by U.S. tax dollars when using Federal funded projects.

Since my first term in Congress, I have been a strong supporter of "Buy America" provisions in many forms of federal legislation under consideration. These "Buy America" provisions are necessary to help our domestic industries compete with highly subsidized foreign competition, nontariff failures and restrictive foreign policies. Thousands of American jobs have been lost or are in jeopardy as a result of unfair foreign competition, and many of these are tied to the Federal Highway program.

I remember very well the salesmanship that went into adding that 5 cents a gallon to the gasoline tax, and the whole thrust of it was we can rebuild American highways and American bridges, and we will be putting some 350,000 Americans back to work. Well, not if we keep buying all of the supplies from overseas.

All U.S. Government purchases should be limited to only materials made in America by American labor. I am convinced that every cent of our U.S. taxpayers' dollars should be spent in this country. This is necessary if we are to continue to have a strong tax base.

It was during this past Congress, the 99th, and also in the 100th Congress, that I was successful in including in the Federal Highway Reauthorization language which required "Buy America" provisions pertaining to the use of cement on construction of our Federal highways. This language was voted on and overwhelmingly approved by the House in consideration of the bill. Unfortunately, the other body voted to delete the Bentley language.

Today, we have the Federal Highway program enforcement without preference of U.S. produced cement. The cement industry in America is one industry forced to compete unfairly with foreign cement. Illegal dumping of foreign products continues to exist, and the U.S. cement industry continues to decline. This is only one example of America's declining domestic industries, and our laws are not designed to prevent it from happening.

Mr. Chairman this sort of problem must not be allowed to continue.

Yesterday, I testified before the Republican platform committee on the condition of the American industrial base. In my testimony, I cited the growing dependence of the Department of Defense on foreign component parts for weapons systems. A *Wall Street Journal* article of March 14, 1988, quoted a senior Pentagon official warning that in a major conflict, "we're going to subcontract the war to Japan."

This statement can best be described as "shocking"! It should not be surprising considering the impact of targeting and dumping of product by foreign producers on our domestic industries. The loss of domestic industrial capacity also means the loss of defense production capacity. The steel mill that closes down because of low demand for U.S. cars, also is needed to make steel for tanks and planes, jeeps and trucks.

Restoring our industrial base cannot be accomplished by one political party. This is a task that demands the commitment of both the majority and minority parties in Congress. During the 100th Congress, we are faced with a number of serious problems. One of these is the trade deficit which contributes to the weakening domestic industrial base.

Because the trade deficit with foreign nations is at an all time high, our domestic policies must be written and successfully implemented to combat this problem of using foreign goods for federally assisted projects. Japan and Canada happen to be two of the leading nations contributing to that trade deficit, and these two are involved in selling many of the components used in highway construction.

I am pleased to see that testifying here today are representatives of the steel industry. My home congressional district includes the Bethlehem Steel Corporation's Sparrows Point Steel Mill and Shipyard. Baltimore has experienced the reduction of steel production in America. Both Bethlehem's Key Highway repair yard and Maryland Shipbuilding's Fairfield facility have been forced to close.

Industrial closings such as these must be reversed. For this very reason, it is imperative that "Buy America" provisions are effectively implemented by our federal agencies.

I look forward to the testimony presented here today and offer my full cooperation in carefully examining the problems involved with application of the "Buy America" provisions. Chairman Oberstar and Mr. Clinger, I commend you for arranging this hearing today.

Mr. OBERSTAR. Thank you for those opening remarks.

We shall have a focus on the issue that the gentlewoman raised.

The first witness this morning is the gentleman from Pennsylvania, Chairman of the Congressional Steel Caucus, Mr. Gaydos. He has been a driving force in legislation to protect the domestic steel industry from unfair foreign competition, Government-owned, Government-subsidized competition, to protected by domestic laws of countries that seek to discriminate against U.S. steel products. The gentleman has vigorously pushed for enforcement of existing Federal laws that have been put in place to prevent unfair competition. This subcommittee is responsive to the gentleman's longstanding concerns. This is the first major hearing in the Congress on the Buy America provisions, and we particularly wanted to have the gentleman from Pennsylvania as the lead-off witness in recognition of his longstanding, vigorous championship of American steel.

TESTIMONY OF HON. JOSEPH M. GAYDOS, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA, AND CHAIRMAN, CONGRESSIONAL STEEL CAUCUS

Mr. GAYDOS. I want to thank the Chairman of this illustrious subcommittee. He is one who is personally familiar with what the Steel Caucus has done over the years. I know that Mr. Towns is in full sympathy and support of what we stand for, including Mr. Clinger, and in particular Mrs. Bentley. They've been fighting our battle with us over the years.

It's very reassuring to know that we have the Chairman of this great subcommittee, who I think displayed his negotiating qualities some five or six years ago in the incident that he very hurriedly referred to, when we put in the first Surface Transportation Act's Buy America provision. There were so many people in concert that had a great desire to destroy the Buy America concept and completely strip it from the legislation. At that time, I believe, he was wearing two hats. He represented the committee and also the number one ambassador and representative of the Steel Caucus during that one or two o'clock debacle at the time.

Maybe this is the time to do it. I want to thank him publicly and as a matter of record for his persistence at that time in forcing the inclusion of Buy America into that Act. Even more important than that, one thing was getting it into the act, but making sure the Administration enforces it is another. That's where a lot of our difficulties lie today. We can go and make reference to the Defense Department and all the Buy Americas we have in there: indirect, direct, all kinds of limitations. The Administration and those responsible are very reluctant, in many instances, and skirt or ignore completely the fundamental Buy America provisions.

In the maritime industry, the same thing occurs. There are always those individuals wanting to get around the limitations of Buy America. The FAA now is the most recent example. They are now seriously considering, allowing all the maintenance and repair of American airplanes and all of the ramifications in foreign countries.

All those things seem to fall into the same category whereby again the necessity and the importance of individuals like the Chairman and the members I mentioned on this committee is shown. We call upon them to make sure that after we have at least the fundamentals in place, we can make sure that the Administration—regardless of which Administration—follows the letter of the law. That's the most important thing.

But may I have, Mr. Chairman—at this time I'd like to introduce to the committee, and put on record, the Executive Director of the Steel Caucus, Mr. Jack Andresen, who is here with me today.

I don't have to go into any extended explanations as to what the Steel Caucus stands for. You've done a magnificent job in that respect.

My statement is relatively short, Mr. Chairman. I know you have a full schedule——

Mr. OBERSTAR. We'd like to have you deliver the statement.

Mr. GAYDOS. Yes. I'll just read some excerpts from it, because I believe you have other things to do.

Good morning, Mr. Chairman. On behalf of the Steel Caucus I want to thank you and the members of the committee for inviting me as the Chairman of the Congressional Steel Caucus to testify in support of keeping the Buy America provision in the Surface Transportation Act.

Since 1977, the Surface Transportation Act has been a catalyst for economic well-being through its assistance in the Federal Highway Administration's Bridge and Highway program. Incidentally, Mr. Chairman, all of the facts and figures that I cite and refer to in this prepared statement find their source in the CRS and the AISI.

Currently, between $13 billion and $14 billion are spent on repairing and replacing Federal highways and bridges. That work calls for a lot of steel. Because of the Buy America provision, that's a lot of American steel. That $13 billion to $14 billion a year translates into 2 million to 2.5 million tons of steel a year for highways and another 0.5 million tons for bridges. To America's steel industry, that is obviously a significant amount. In real terms that 2.5 billion tons of steel means 6,000 to 7,000 new jobs in steel and its related industries.

That is particularly important in today's economy. The domestic steel industry in the past four years has made great progress expending in excess of $8 million to modernize its steel-making facilities. This reinvestment in modernization comes on the heels of the steel industry's worst period since the 1930's. Total industry losses over the past 10 years have exceeded $10 billion, and steel employment has declined from 450,000 workers to 160,000.

Restructuring of the industry is paying off, however. In 1987, with the exception of one company, the balance sheets of all the integrated steel producers were in the black. This was the first time.

Today, the U.S. steel industry is the most productive in the world. I cite that figure: 4.5 man-hours per ton of steel. I repeat, that's the most productive in the world.

Unless the Federal Government continues its efforts to limit the flow of our tax dollars to purchase foreign products at unfair or illegal prices, the steel industry cannot expect to see this kind of progress continue, despite the industry's best efforts. This is where strong Buy America provisions become important to American industries. Provisions like Buy America are not unique. Japan, Korea, and the countries of the European Economic Community employ similar mechanisms to impede the flow of foreign goods and services to their countries.

Some people, including Members of Congress, have criticized Buy America as being protectionist and anti-trade. Nothing could be further from the truth in our analysis. If anything, Buy America should be labelled as an insurance policy. It provides security in the marketplace for U.S. manufacturers and American workers.

It is the opinion of the Steel Caucus that the Highway and Bridge Program and Buy America is not only critical to the domestic steel industry, but to the Nation's general, overall economy as well.

The use of tax dollars to benefit Federal, State and local jurisdictions is an appropriate function of Government. Buy America provisions do not prevent foreign goods from entering U.S. markets, but they do, however, retain markets and jobs for U.S. manufacturers and workers. That is sound economic policy, in the opinion of the Steel Caucus.

The Federal Highway and Bridge projects have a significant impact on the domestic steel industry. Depending on the type of highway or bridge project, an expenditure of $1 billion can generate demand for direct steel mill products in excess of 150,000 tons. The greatest impact for steel demand occurs in new highway and bridge construction projects. On maintenance repair projects, steel requirements are significantly lower, approximately 70,000 tons of steel mill products per $1 billion spent.

Steel use in highway and bridge projects is relatively small in proportion to total steel use throughout the economy, but data shows that the effect from Federal expenditures on highway projects on steel demand is greater than on other sectors of the economy. Simply put, for every Federal dollar spent on highway projects, more steel is required as a direct input than for other goods and services. And that is amazing. Of all the sectors of the economy supplying inputs to highway and bridge projects, only engineering, petroleum refining, and wholesale trade supply more direct inputs than the domestic steel industry.

Therefore, the amount of steel may be small, but the impact the highway and bridge projects have on steel is more than very dramatic. Obviously spending $1 billion or $13 billion to $14 billion on the highway and bridge construction is not going to save the industry. Only the industry can accomplish that. Spending billions of dollars on highways and bridges does, however, strengthen steel demand.

As we have seen in the past 15 months, strong steel demand leads to a strong, healthier, more productive steel industry.

The adverse impact that imports are having on our economy illustrates the degree of importance and profitability that our trading partners place on having unrestrained access to U.S. markets.

In conclusion, I cannot stress to the committee enough the need to preserve and, if possible, strengthen Buy America. Nothing else that the Congress has tried has worked as well.

Mr. Chairman, I'd like to see more of the $9.6 billion balance of the Highway Trust Fund spent. We have a growing infrastructure need in this country. Sooner or later this is going to have to be addressed. This committee is sensitive in this area.

In closing, Mr. Chairman, I would like to say the Federal Highway Administration's commitment to its program and Buy America has made and will continue to make a difference for American industry.

On behalf of the Congressional Steel Caucus, I want to commend the Federal Highway Administration for its longstanding commitment to the bridge and highway program and its enforcement of Buy America. Unlike other similar programs, the highway program is paying off, and I appreciate that.

Mr. Chairman, I would like to finally conclude by again lauding the efforts of you as an individual and your committee in general in riding herd and monitoring just how that clause is working, and your persistence in making sure that the intent of the clause is there, and that it does work and is applied.

I want to finally conclude by stating that even in today's newspaper there are articles involving the Japanese continual disregard of their limitations in this country—for instance, as I clipped from this morning's paper where we have the companies involved in dumping of small trucks in the American market, all of them, Toyota Motors, Nissan Motors, Mazda, Isuzu, and Mitsubishi—the facts indicated they're dumping again. The point I'm trying to make is that if we have these Buy America provisions, along with the monitoring of this committee—if we enforce them and relatively in comparison, they're very minor and insignificant in relation to what other countries have—at least that's a step in the right direction.

Hopefully this is a harbinger of what other committees in this Congress are going to do. In conclusion, I can't muster more sincerity in telling this committee personally that under these circumstances and in this hearing, I thank you for what you've done, and what you have been doing. Thank you for saving us that dark Friday night when you made sure that Buy America stayed in there. I want to assure you that the Steel Caucus, as an entity, collectively and individually, is going to be there to back up every move that you make and to help you, and to extend their eternal gratitude for what you're doing in this area.

Thank you very much. I'll respond to any questions you may have. Maybe you don't have any, or maybe you do. But thank you for allowing me to testify.

Mr. OBERSTAR. Thank you very, very much, Mr. Gaydos, for that splendid testimony with details, facts, and information that will add to the fund of knowledge that we are assembling during the course of these hearings to make the case for Buy America. It does the things that we intended it to do. Thank you very much for your kind and generous comments on this member's role in behalf of Buy America.

As you have said, very clearly Buy America retains markets for industry, retains jobs, contributes to the profitability of the steel industry, and strengthens overall steel demand. The multiplier effect you've also referred to is very significant. But I think a point that you made, and perhaps you have some examples that the Steel Caucus would like to further submit for the committee, is enforcement of existing law.

It is one thing, as you pointed out, to write a law. It's quite another thing for the Executive Branch to enforce that law. All too often laws are simply overlooked, circumvented, and evaded. The purpose of this hearing, and the purpose of this subcommittee, is to make sure that the laws the Congress writes are carried out by the Executive Branch.

You talk about foreign repair stations in aviation. This subcommittee and the Aviation Subcommittee both have focused on this practice, which is of great concern to us.

There is another matter that we're going to be looking into, and that is McDonell-Douglass Corporation, who is going to be making its new MD-80 DC-9 aircraft entirely in China, for sale in China, to be sure. But the next step is to build the parts there with cheap slave labor, bring them into the United States, undercut the domestic market, and then we being another cycle of erosion of another major industrial sector where the United States has preeminence in the world, but then we lose world market share and domestic market share.

We're not going to allow that to happen in steel and those sectors over which this subcommittee has jurisdiction, I want to assure you. But it's the evasion of existing law and regulation and failure of Government agencies to carry out their mandate. The Steel Caucus has focused on that subject, and we would like you—if you have any horror stories right at your fingertips—to cite them here, and we'll keep the record open so that you could submit additional matters for us to look into further following these hearings.

Mr. GAYDOS. Mr. Chairman, thank you for the invitation, and we will submit itemized, documented, and proven factual situations illustrating what you've just pointed out.

I want to say at this time, if I may, that I'll never forget the time when a bridge in the Chairman's Congressional district was being built. I remember the fuss that the Chairman raised, and brought to the Steel Caucus. He was so persistent in pursuing what he thought was right that that bridge eventually—there was a compromise effected, and American steel was used in that bridge. That was a substantial amount of it. I just want to commend again, as a matter of record, the long historical background that proves the Chairman's interest in the subject matter on this particular point.

We will submit for the record, Mr. Chairman, a lot of horror stories, and document them sufficiently so that they become effective in the overall package that you're trying to put together here justifying your stand on Buy America.

Mr. OBERSTAR. Thank you very much.

For the record, that was the Arrowhead Bridge between Duluth and Superior, MN, some 90,000 tons of steel. The State of Wisconsin was contracting it and slipped through with 10,000 tons of steel. The other 80,000 were American steel.

The gentleman from Pennsylvania.

Mr. CLINGER. Thank you very much.

I too want to join in thanking Chairman Gaydos for his very eloquent testimony here this morning.

I think you focused on a couple of very critical points, as Congresswoman Bentley also pointed out, we've seen an erosion of our industrial base here in this country. That erosion cannot be allowed to continue without running the very real risk of making the United States much less than a world power. Clearly, you cannot be a world power or a significant player on the world scene if you don't have a healthy, viable steel industry.

I think that is what the Steel Caucus keeps reminding us of. Steel is a basic part of our industrial base and a basic industry for our overall ability to compete.

The other point that I think bears emphasizing is the fact that it may have been true, in years past, that the steel industry was not as productive and had not adopted the technology to make them more competitive in the world market. That is no longer true. I think that you, Mr. Gaydos, and I can testify to that fact from personal observation of the steel industries in our own districts. Herculean efforts have been put forth to make the industry competitive on a fair basis with any steel producer in the world.

What we cannot do, however, is to compete with those steel producing countries that subsidize production and who have unrealistically low labor rates, and so forth. I think that today the United States steel industry is a lean and mean operation. It's become far more efficient and far more productive and therefore, we need to ensure that that productivity continues and that the steel industry has at least a fighting chance to sustain itself.

So we are very grateful for your reminding us over the years of the need to help maintain this industry and keep it in a healthy condition. I know that you will continue in those efforts.

Mr. GAYDOS. If my colleague would yield to me for just one comment. I remember the criticism directed toward the steel industry through the years that it was so outmoded and it couldn't do this or that, it couldn't compete and all those things. We now have admittedly, in international circles the most modern, up-to-date specialty steel industry in the world. There's no question about that. And still it can't compete without protective devices. That just goes to illustrate and to show and prove without question that our so-called trading partners are using all types of predatory activities, and that you can't, under any circumstances or whatever you do, unless you amend the law and put protective forces in place, compete internationally in today's concept of international trade.

I don't care whether you have GATT in or out. I don't care what you have. You have to take steps, reasonable steps. Today, even this Administration which is so outlandish in its repeated statements, internationally and domestically, to the effect that they don't like any kind of curtailment of international trade—even they have admitted in this particular segment of the steel industry, the high specialty steel, that there are needs, and it is necessary. They must put quotas—and some are in place today—as far as specialty steel.

Granted, this is not all, but there are some very important aspects coming in, such as flat rolled steel and things like that. We'd like to have even more of it.

That illustrates, as far as I'm concerned, and I think to your committee, that we have to, in the ultimate, respond to the international threat and do what others do unto us. That's the Golden Rule, and we'll have to take protective steps.

I think that we're doing that, and I hope that we can get everybody to wise up and hopefully cooperate internationally and make GATT work as it's supposed to. Make it work. Right now, it's not working.

Just today I submitted the dumping of the automobiles on the American market. That has happened with TVs. They've had suits before the International Trade Commission on repeated occasions involving all types of items. It seems to be that the Japanese seem one way or the other to be the center of all those things. There are other countries doing the same thing, though.

Mr. CLINGER. I would just note one bright spot on the horizon, perhaps. That is that the steel producer in my Congressional district, as a result of the fact that the dollar has now come back into parity with some of the currencies in the rest of the world, has just sold close to $1 billion or more worth of sewer pipe to Korea, and they beat the Japanese to do it. So there are some bright signs on the horizon.

Mr. GAYDOS. If those things weren't temporary, but permanent, I'd be all for them. But to me, it just seems like they're a lull in the entire problem. It's so temporary. We have to hopefully find permanent solutions, I would hope.

Buy America and the highway bill is one of the permanent solutions, I submit.

Mr. OBERSTAR. I fully agree with that.

The gentleman from New York, Mr. Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman.

Let me first thank you for your very interesting and thought-provoking testimony. Looking at the fact that we've lost over 290,000 jobs in industry, that's something that we ought to be concerned about. If we're concerned about unemployment and crime and drug abuse, then I think it makes a lot of sense to see what we can do to bring some of those jobs back.

Could you project the number of steel jobs that would be created if we expended $1 billion from the Highway Trust Fund reserve?

Mr. GAYDOS. At least 2,000 to 3,000 jobs. That would be broken down.

As I've mentioned in my prepared statement, to my colleague, if I may, although the numbers don't seem significant, it's a principle involved. Although in the highway program, steel per se is not a large portion, if you try to compare it percentagewise, there are so many implications in it that it is very, very important to the overall steel health of the country.

We talked about jobs on the whole program. If they expended their funds generally, what they have available, then we're talking about 10,000 to 15,000 jobs.

Mr. TOWNS. All right.

Thank you very much, Mr. Chairman. I have no further questions.

Mr. OBERSTAR. Thank you, Mr. Towns. Mrs. Bentley?

Mrs. BENTLEY. Thank you, Mr. Chairman.

I'm so glad that you explained, Mr. Gaydos, how that 26 percent got into the legislation. I was not aware of that, Mr. Oberstar, and I'm really delighted that you pushed for it, and accomplished something.

I have a question on that today, Mr. Gaydos. Is 26 percent sufficient? When that was put in, 26 percent would be okay, it seems to me, if we were talking about companies overseas that were not subsidized. They were doing it as a business against a business, instead of a subsidized company.

Mr. GAYDOS. Our director suggested to me that 26 percent, although an arbitrary figure, is probably nothing more than holding the line. If we could get more, it'd be great. Sometimes you ask for more than what you can get, and then you should be very grateful for what you've got.

But I believe that you raise a very good point, and a very sensitive point. If improvement could be made, I'd be very happy. I think the Steel Caucus would, and so would everybody. But I doubt if we could do it mechanically or from a practical sense.

Mrs. BENTLEY. I'm throwing the challenge to you, Chairman.

Mr. **Gaydos**. We're going to try.

Mrs. **Bentley**. To look into this. It would seem to me that when you have all of the subsidies coming from other countries, you take into consideration the money that we lose to our tax base in this country when any purchase is made abroad by the Federal Government. For any dollar that's spent in this country by a Federal agency, $0.46 of that, according to the Congressional Research Service, goes into taxes—Federal taxes, local taxes, unemployment, Social Security, etc.

That's a factor that we very seldom take into consideration when we're talking about the bottom line of a foreign product versus an American product. Mr. Gaydos, you're talked on that many times.

The other thing that I'm glad you said was that it was only a temporary solution as far as the dollar being down. I'm greatly concerned that with the dollar being down, our assets are being purchased by those dollars that we've sent overseas to buy this steel, those light trucks and other items. I'd like to hear your comments on that, Mr. Gaydos.

Mr. **Gaydos**. I mentioned that figure in responding to my colleague on the Steel Caucus. That was to illustrate the fact that it is temporary. It does leave an awful lot of room for criticism. I don't know if the economy is going to hold. We try to look at these figures and try to project, after a fashion, and fashion our programming or scheduling following what we think the projections are. We probably have to admit that we're as confused as everybody else. These things fluctuate, and in a matter of three to six months, we're in an altogether portion and taking an altogether different stand. Things are changing so drastically.

We don't have a National policy of stability. I guess we're just going to have to suffer throughout the next couple of years or six months until the new Administration comes in. I'm not getting into the political aspect—but a new Administration might have some new concepts about how to stabilize internationally what we're doing.

I wouldn't be able to respond specifically to my colleague's inquiry, but that's generally the confused picture as I see it. That makes it very difficult for us and for this committee.

Mrs. **Bentley**. The figures that the Steel Caucus was able to obtain, and did so so successfully, Mr. Gaydos—the figures of 21.5 percent, or 21.3 percent was to be the limitation of foreign steel in our market.

We never did take into consideration the amount of steel that we lost due to automobile imports, and all those other items. That's just gone. Am I right or wrong on that?

Mr. **Gaydos**. The facts indicate that in all the hidden steel coming in in so many different forms, and how they come in, and we just—it's almost impossible to obtain figures and keep them updated. As soon as we close one loophole, we prevail—for instance, the Canadians have given us a better count—but before you know it, they have again regressed again back into their lackadaisical situation. Before you know it, their figures are suspect, and they aren't monitoring what's coming in.

We're getting it from so many different sides, and it's changing so drastically that all of our figures are basically correct, but we have to just make a conjectural guess as to what is coming in. And there are so many hidden ways.

As soon as we discover one and make an attempt to close it, another one pops up. It's all these hidden things. For instance, we talk about automobiles coming in. Everything attached to it—the textiles on it, the rubber on it, all types of exotic materials that are on the automobile—that touches all of our industries in all respects.

Buy America is again the concept. If this highway bill retains it, and actually enforces it, it is going to do so much for other committees and other concepts in the Country that it's going to be again the vanguard. I figure that you're going to make it work. I think this committee has made it work, and it'll be probably even better in the future. It's so important to us doing the things on the Steel Caucus.

Another committee, the maritime industry we've talked about, the auto workers and their problems, and things like that will be helped.

If I may, Mr. Chairman, take advantage of the situation that I have here, I'll say that I'm so grateful for this committee. I really am, because they're so sensitive to our problems on the Steel Caucus. Maybe it's so because we have an awful lot of active members on this committee in the Steel Caucus.

Many times your constituents don't know how much time you spend that is unnoticed and undocumented over in the Steel Caucus and all of our ramifications—all of our hearings and travelling to Canada. You could very easily say, look, I'm going to take care of my own committee obligations. I am so grateful, being in one of the posts where you've been so kind as to place me, that I can depend upon the members here to make these personal sacrifices.

It behooves me at this time, under these circumstances, to make that a matter of record. Hopefully it's used and brought to the attention of your constituents and others among our colleagues, all that time you put in. It's almost incomprehensible as to the amount of time that we put in, and maybe our constituents don't even know about it.

Mrs. **Bentley**. You've been a great chairman, if I may say so, in leading it.

Mr. **Gaydos**. Thank you.

Mrs. **Bentley**. Mr. Chairman, I want to call to your attention that in the back of the room is a man from your home state who is in the automobile parts business. We ran across them in a Navy League meeting that's going on. Their company is one of those that's being hard hit by Japanese assembly plants in this country, and yet the Japanese manufacturers will not talk to them American manufacturers at all. I just wanted to call that to your attention, as an example of the disadvantages faced by our industries today.

Mr. **Oberstar**. I thank the gentlewoman for mentioning yet another area of discrimination.

Mr. Chairman of the Steel Caucus, we thank you very much for your testimony and your very kind words about the efforts of many of us on this committee. We can assure you that this subcommittee is a watchdog on safety. It's also a watchdog on Federal agency implementation of laws enacted by the Congress, principal among these, Buy America.

We've been preparing these hearings for a long time. As you know, the work of the subcommittee is much like an iceberg. You see only one-third of it; two-thirds is in the preparation.

We have two more hearings to go in this series, and then we're going to take a longer look at another major infrastructure program, the Clean Water Act. Just the infrastructure side of it. There have been some $20 billion plus expended in the construction of sewage treatment facilities, and there's a Buy America provision in that law as well. It's not as tough, and not as clear-cut, as the one in the Federal Highway program. We'd like to take a microscopic look at the administration of that Act.

Meanwhile, we have the mass transit program, which has serious problems. We found some outright circumvention of Federal law in clear partnership with the Urban Mass Transit Administration. The Corps of Engineers program has massive amounts of steel being used, and there is circumvention of the Buy America provisions there.

We just want to make the agencies honest. The law is there. We have to make sure they're administering it honestly.

Mr. GAYDOS. Well, thank you, Mr. Chairman, for allowing me to appear here today. You can rest assured that we're going to be working with this committee, and we'll be very close with you.

As far as my remarks, let me say this. It's very easy when you tell the truth.

Thank you very much.

Mr. OBERSTAR. Thank you, Mr. Gaydos. We greatly appreciate your participation this morning.

[Mr. Gaydos' prepared statement follows:]

THE "BUY AMERICAN" PROVISION STRENGTHENS AND EXPANDS OUR NATION'S INDUSTRIES

HON. JOSEPH M. GAYDOS
of Pennsylvania

Chairman
Congressional Steel Caucus

Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation

March 31, 1988

Good morning, Mr. Chairman. I thank you and the members of the committee for inviting me, as the Chairman of the Congressional Steel Caucus, to testify in support of keeping the "Buy American" provision in the Surface Transportation Act.

Since 1977, the Surface Transportation Act has been a catalyst for economic well-being through its assistance in the Federal Highway Administration's bridge and highway program.

Currently, between 13 and 14 billion dollars are spent on replacing and repairing Federal highways and bridges. That work calls for a lot of steel and, because of the "Buy American" provision, a lot of American steel.

That 13 to 14 billion dollars a year translates into two to two and a half million tons of steel each year -- 1.5 to 2 million tons for highways and another half million tons for bridges.

To America's steel industry, that is a significant amount. In real terms, that two and a half million tons of steel means six to seven thousand new jobs in steel and its related industries.

That is particularly important in today's economy. The domestic steel industry in the past four years has made great progress, expending in excess of 8 billion dollars to modernize and upgrade its steel-making facilities. This reinvestment and modernization comes on the heels of the steel industry's worst period since the 1930's. Total industry losses over the past ten years have exceeded 12 billion dollars and steel employment has declined from 450,000 to 160,000 workers.

Restructuring of the industry is paying off. In 1987, with the exception of one company, the balance sheets of all the integrated steel producers were in the black. Today the U.S. steel industry is the most productive in the world, 4.5 man hours per ton of steel.

Unless the Federal Government continues its efforts to limit the flow of our tax dollars to purchase foreign products at unfair or illegal prices, the steel industry cannot expect to see this kind of progress continue despite the industry's best effort. This is where strong "Buy American" provisions become important to American industries.

Provisions like "Buy American" are not unique. Japan, Korea, and the countries of the European Econonmic Community employ similar mechanisms to impede the flow of foreign goods and services.

Some people, including members of Congress, have criticized "Buy American" as being protectionist and anti-trade. Nothing could be further from the truth. If anything, "Buy American" should be labeled as an insurance policy because it provides security in the market place for U.S. manufacturers and American workers. It is the opinion of the Steel Caucus that the highway and bridge program and "Buy American" is not only critical to the domestic steel industry but to the nation's economy as well.

The use of tax dollars to benefit Federal, State, and local jurisdictions is an appropriate function of government. "Buy American" provisions do not prevent foreign goods from entering U.S. markets. "Buy American" does, however, retain markets and jobs for U.S. manufacturers and workers -- that is sound economic policy.

Federal highway and bridge projects have a significant impact on the domestic steel industry. Depending on the type of highway or bridge project, an expenditure of 1 billion dollars can generate demand for direct steel mill products in excess of 150,000 tons. The greatest impact on steel demand occurs on new highway and bridge construction projects. On maintenance and repair projects, steel requirments are significantly lower -- approximately 70,000 tons of steel mill products per 1 billion dollars spent.

Though steel use in highway and bridge projects is relatively small in proportion to total steel use throughout the economy, data shows that the effect of Federal expenditures on highway projects on steel demand is greater than on other sectors of the economy. Simply put, for every Federal dollar spent on highway projects, more steel is required as a direct input than for other goods or services. Of all of the factors of the economy supplying inputs to highway and bridge projects, only engineering, petroleum refining, and wholesale trade supply more direct inputs than the domestic steel industry. Therefore, while the amount of steel may be small, the impact that highway and bridge projects have on steel is very dramatic.

Obviously, spending 1 billion dollars or 13 or 14 billion dollars on highway and bridge construction is not going to save the steel industry. Only the steel industry can accomplish that. Spending billions of dollars on highways and bridges does, however, strengthen steel demand. As we have seen in the past 15 months, strong steel demand means a stronger, healthier, more productive steel industry.

The full impact of the Federal Highway Administration's programs can only be achieved through the imposition of the "Buy American" provision. For the domestic steel industry, "Buy American" preserves the level playing field for steel products used in highway and bridge maintenance and construction.

The adverse impact that imports are having on our economy illustrates the degree of importance and profitability that our trading partners place on having unrestrained access to U.S. markets.

I cannot stress to the Committee enough, the need to preserve and, if possible, strengthen "Buy American". Nothing else that the Congress has tried has worked as well.

Mr. Chairman, I would like to see more of the 9.6 billion dollar balance of the Highway Trust Fund spent. We have a growing infrastructure need in this country that sooner or later is going to have to be addressed.

In closing, Mr. Chairman, I would like to say that the Federal Highway Administration's commitment to its programs and "Buy American" has made and will continue to make a difference for American industries. On behalf of the Congressional Steel Caucus, I want to commend the Federal Highway Administration for its longstanding commitment to the highway and bridge program and its enforcement of "Buy American". Unlike other similar programs, the highway program is paying off and I appreciate that.

Mr. Chairman, that concludes my remarks and I will be happy to entertain any questions or comments.

Thank you.

Mr. Oberstar. Our next witnesses are a panel, consisting of Mr. William Hoppe, Bethlehem Steel Corporation, representing the American Iron and Steel Institute (AISI); he's also Chairman of the International Trade Committee of AISI; Mr. Ronald Flucker, Vice President and General Manager of the American Institute of Steel Construction; and Mr. Ken Kovack, Assistant Director of the legislative department of United Steelworkers of America.

Gentlemen, come forward.

[Witnesses sworn.]

Mr. Oberstar. We greatly appreciate your participation in our hearings this morning. We especially appreciate the considerable effort that was expended in putting together the testimony. I have read the statements prepared for this hearing. I must say that they are well-done, well-documented, thoroughly thought out. We are pleased to have your testimony. You may deliver it in full or summarize as you see fit.

We will have a number of questions that we'd like to pursue following your presentation.

Would you please begin, Mr. Hoppe?

TESTIMONY OF WILLIAM L. HOPPE, BETHLEHEM STEEL CORP., CHAIRMAN OF INTERNATIONAL TRADE COMMITTEE, REPRESENTING AMERICAN IRON AND STEEL INSTITUTE; RONALD FLUCKER, VICE PRESIDENT AND GENERAL MANAGER, AMERICAN INSTITUTE OF STEEL CONSTRUCTION; KENNETH S. KOVACK, ASSISTANT DIRECTOR, LEGISLATIVE DEPARTMENT, UNITED STEELWORKERS OF AMERICA; AND ROBERT E. FARRIS, ACTING ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, ACCOMPANIED BY DAVID S. GENDELL, CHIEF OF HIGHWAY OPERATIONS

Mr. Hoppe. Thank you, Mr. Chairman.

My name is William L. Hoppe. I am pleased to have the opportunity to discuss with you the very important matter of the highway program and its Buy America provision.

I'm here today as Chairman of the American Iron and Steel Institute's Committee on International Trade. I'm also General Manager of Industry Affairs for Bethlehem Steel Corporation. My comments here today are on behalf of the domestic member companies of the American Iron and Steel Institute.

AISI has been a strong supporter of the inclusion of Buy America provisions in Federal highway bills since the 1970's. We have been pleased with the strong support of this provision that Congress, including particularly many members of this subcommittee, has shown in the many highway bills that have passed containing Buy America.

Our support for Buy America, and we believe the support of the Congress, has been based largely on the simple but compelling proposition that if the U.S. Government is going to fund highway construction through taxes on its citizens, the benefits of that construction in terms of jobs created should also accrue to U.S. citizens.

I am here today to confirm the wisdom of the legislation passed by you, and to state for the record that it has been a success.

We believe that the highway bills, which as you know include bridge construction, and the Buy America provisions contained in them, have lived up to all of the expectations that you and we had for them. The record of accomplishments of the highway bills is impressive. When the interstate highway system is completed in the 1990's, the highway programs will have built the 42,500 mile National system of interstate and defense highways and either maintained or built and maintained the 850,000 miles of Federal aid highway system.

Most importantly, this achievement has been accomplished on a pay-as-you-go basis through the use of a modest Federal gasoline tax, without adding to the National debt. From this investment, the Federal Government through the states has built a highway transportation infrastructure system second to none in the world. This system, by increasing the productivity of the U.S. economy, plays a large role in maintaining the high standard of living that we enjoy.

Obviously the highway system not only adds to the productivity of the economy, and helps create jobs, but through its construction has had an enormous impact on employment, production and investment in many sectors of the U.S. economy. In the steel industry, we have estimated that approximately 6,000 direct jobs and 2 million tons of steel products per year are attributable to highway and bridge construction under the highway program.

While this may seem like a small amount for an industry that shipped 76 million tons of steel products in 1987, let me assure you that these tons are vitally important to us, and especially to those companies that produce structural shapes, plates, rebars, wire, and piling. These products are used intensively in highway and bridge construction, and the companies that produce them have made investments over the years in response to the demand for these products from the highway program.

With the steel industry struggling to modernize and upgrade its facilities, every ton produced for this market is important for our cash flow. As Mr. Flucker will discuss in his statement, without the current Buy America language, many of the jobs created as a result of the demand for highly programmed products would be in serious jeopardy, along with the taxes that are paid and other jobs in the communities which are dependent on the steel industry.

Let me now address the policy in economic issues related to Buy America and the steel industry. First, many opponents of Buy America have over the years attempted to eliminate that provision from highway bills, because they believe Buy America preferences would tend to decrease competition and increase the cost of procurement under the program.

In response to this allocation, we assert that there is intense competition among domestic producers of products used in highway and bridge construction. In addition, in regard to the cost issue, we would cite the Congressional Research Service, which has twice determined that there is return to Federal, State and local Governments over $0.40 per dollar in taxes when domestic products are procured by the Federal Government.

It would therefore seem that on an economic basis if procurement of foreign materials were to be justified, such procurement would have to offset the negative tax impact of materials not produced in the United States, which is greater than the Buy America preference contained in the highway bill.

You might say that we should go to 40 percent margin of preference for domestic bids, rather than 26 percent.

Secondly, some critics have asserted that our international obligations under the GATT Government Procurement Code are somehow compromised as a result of the continuation of Buy America in the highway bill. As you know, the Government procurement code does not cover Department of Transportation procurement under the highway program. The U.S. is therefore free to apply domestic preferences to such procurement without violating our obligations under the code.

Permit me a short digression here on the GATT Government Procurement Code. Its implementation has been a disaster for the U.S. Reports by the International Trade Commission have revealed that the expected benefits to American companies as a result of that code have not materialized, although the procurement opportunities expected to be offered to foreign companies have certainly occurred.

To be specific, during the international negotiations on the code, U.S. companies were told by our negotiators that they would have access to $20 billion annually in new foreign government procurement, and that they would be treated, under the code's provisions, in the same manner as domestic companies bidding on code-covered procurement contracts in the foreign country.

The reality, as reported in the ITC report, is that U.S. companies have only gained access to an additional $4 billion in foreign procurement, and not all of this is directly attributable to benefits attained under the code.

But that's not all. For a couple of years or so, our international negotiators have been pushing to expand the code's coverage to Federal Government procurement that is presently uncovered. Specifically, U.S. negotiators have proposed that services which include construction and transportation be added to coverage under the code. Given the disastrous results of the code as originally negotiated, we shudder to think what would happen if Buy America were eliminated for Federally funded construction projects, especially highway and bridge construction.

We appeal to the Congress to help us in opposing any consideration of expansion of the code, especially in the all- important highway and bridge construction area, and at least until the U.S. has gotten fair value from the foreign governments for the Buy America coverage it has already given up.

In closing, I would like to raise the issue of highway and bridge infrastructure projects in the future and future legislation. As a key part of the American economy, our concern regarding America's infrastructure is not limited to obtaining a strong Buy America provision for future highway or infrastructure programs, though clearly we support and will work for such a provision. But we also have a large stake in their condition and in the ability of the U.S. highway and bridge system to enable us to deliver the goods.

Without an effective highway and bridge system, the competitiveness of America's entire manufacturing sector would be badly compromised. So, when the National Council on Public Works Improvement published its study in February 1988 outlining the current and future infrastructure needs of our economy, we paid close attention.

That report found, and I quote from page one, "convincing evidence that the quality of America's infrastructure is barely adequate to fulfill current requirements, and insufficient to meet the demands of future economic growth and development."

In October of 1985, the American Transportation Advisory Council estimated that the capital needs of the highway system for the period from 1987 to 1996 were $494 billion, a sum far greater than that expected to be spent under the current highway bill during this period.

Clearly, the American highway and bridge system requires a substantial additional investment commitment to be able to meet the needs of the U.S. economy in the future.

We in the U.S. steel industry, having invested in production facilities and product development to meet the needs of the highway and bridge programs to date, stand ready to support the next generation of highway and bridge programs so essential to our Nation's economic future.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you very much, Mr. Hoppe, for that splendid presentation. Your citing of the report of the National Council on Public Works Improvement—you're looking at two of the members who have probably the keenest interest in the work of that group. Mr. Clinger and I were the coauthors of the language that created the Council. Of course we've watched its work very closely ever since.

Mr. Flucker?

Mr. FLUCKER. My name is Ronald L. Flucker. I am the vice president and general manager of AISC Marketing Inc.

This is a technical market development association supported by Bethlehem Steel Corporation, the U.S. Steel Division of the USX Corporation, and the American Institute of Steel Construction, which is an association of structural steel fabricators who supply structural steel to the bridge and building markets.

From 1964 until 1986 I was employed by the United States Steel Corporation as manager for structural and plate products, and manager of construction marketing. I am a graduate and registered structural engineer, and my career has been in the areas of developing markets for structural and plate steels in the bridge and building industry.

First, I would like to address steel, bridges, and put the position of steel in the bridge market into perspective. The domestic consumption of steel for all uses in the United States is approximately 90 million tons per year. Of this, about 20 percent is from foreign sources. I estimate that approximately 500,000 tons of steel is fabricated annually for the superstructure of new or rehabilitated bridges, that is, the girders, the trusses, and the arches.

This is the market that I know intimately. I would also estimate that another almost 2 million tons of steel is used for other applications, such as reinforcing for paving and bridge decks, pilings for foundations, culverts and other drainage products, and miscellaneous materials such as sign structures and fencing. This means that almost three percent of all the steel used and four percent of all domestically produced steel is consumed by the highway and bridge construction industry directly.

I'd like to say that at this point, you seem to have three numbers on the table. My friend Mr. Hoppe has given you a 2 million number, and I'm talking 2.5. My friend Mr. Farris is going to say 1 million. I believe that if anybody is erring, we're closer to the truth on this one. [Laughter.]

Although I do not have a data source, and I doubt that anyone does, I feel confident in saying that at least 90 percent of this steel is covered by Buy America provisions of the Surface Transportation Assistance Act of 1982 and subsequent acts, or by local Buy America legislation.

Now, speaking broadly to the three specific questions that you posed about the act and its enforcement: my answer is brief. To the best of my knowledge and experience, the Buy America provisions of the Surface Transportation Act of 1982 have been enforced consistently and accurately to the satisfaction of the steel mill and fabricator companies which I represent. Further, I believe that its administration has been a minimal burden on the State and the agencies which have to enforce them. The reason for this is that the documentation required to prove that steel products meet the material requirements set forth in the specification documents describing them—in other words, are they strong enough? Are they this or that?—are generated by the domestic mills who produce the products. This is a self-qualifying type of thing: these products are suitable for use.

This documentation generates a paper trail of mill test certification reports which accompany steel as it leaves the mill and stays with it at the fabricator's shop and is eventually filed with the State or agency which builds the project. These mill test reports are then evidence of compliance not only with the material specifications, but with the Buy America provisions.

We have encountered some contractors who have consistently pursued a foreign origin steel. One example was a fabricated tunnel liner. This was an unusual product, and the contractor may have thought it was excluded from the provisions. In this case, our information grapevine alerted us to the problem. The steel industry representatives, including my friend over here, Bill Epling, followed this problem closely. After a lot of effort, they convinced the State and the contractor that foreign material would not be allowed here. But it did take our concerted efforts to head off a potentially bad situation.

I would repeat that except for the exceptions, I have heard of no consistent problem areas. There may be some improvements in the administration of the provisions, in the areas of standardization of documents, and interpretations, which could be suggested after a careful review by FHWA and steel industry representatives. But this would be the limit of our criticism. AISC will certainly help in this endeavor.

Incidentally, AISI, which is the steel companies association, has already produced a booklet which pictures the role marks used in domestically produced steel shapes to help those responsible for the enforcement of Buy America provisions and customs inspectors to identify domestically produced steel shapes.

I would now like to address the economic impact of the Buy America requirements. Since I am most knowledgeable about the bridge structure component of the industry, I'll address my remarks to that 500,000 ton market, and leave the other 2 million tons to others.

I have interestingly enough just thought—about 100,000 tons or one-fifth of that is fabricated in Pennsylvania, principally by one large fabricator in Lancaster County. No commercials. [Laughter.]

Again, trying to put things in perspective: I would estimate that 90 percent or more of this market is covered by the Buy America provisions. Further, the bridge market is a competitive one. Not only competitive between competing sources of mill steel and fabricators, but it is competitive particularly between the competitive building materials steel and concrete. That's why they hire me.

I estimate this market is shared 50–50 by steel and concrete, with concrete dominating the short-span, 120 feet and under in length, bridge market throughout the country, and most of the market on the West Coast. Steel dominates the longer span and more complicated curved and continuous bridge market and most of the market in the Northeast.

This intense competitive market situation has brought not only price competition into the marketplace, but technological innovation competition.

Let me give you an estimate about what the bridge market means to the steel industry in the way of jobs. A ton of steel fabricated into bridge components, sitting in a fabricator's yard, ready for shipment to a job site where it will be erected, probably has 25 man-hours of direct and indirect labor. That is the mill's labor, the fabricator's shop labor, detailing, transportation, utilities, the paint manufacturers, the welding rod manufacturers, the bolt manufacturers labor, and so on, and all of the management and office work associated with these activities.

A ton of mill steel arriving in a fabricator's plant is worth about $600. The fabricator adds over $600 more in value. So a typical bridge component, again, sitting in the fabricator's yard is worth about $1250. For a 500,000 ton-a-year industry, we are therefore talking about 12.5 million man-hours, or 6,250 man-years or work. This is about $625 million in value.

Now, I'm not an economist, so I can't make an estimate of the multiplier effect, although everybody else is doing it here. But I am sure that these 6,250 jobs support a lot of other jobs and pay a lot of taxes.

Now I'd like to address the problems of supply. The principal mill product from which bridges are fabricated is steel plate, by a factor of probably 90 percent. There are seven mill complexes that I know of that can supply steel plate of the quality necessary for bridges. From time to time there may be stretchouts in mill deliveries, but I cannot imagine a shortage which would limit the capability of the industry.

I also believe that the steel mills recognize the unique problems which the fabricators have in the markets, and are making every effort to ensure a smooth flow of materials to them. The mills recognize that consistent availability of steel plate products for the projects under construction is necessary to build confidence in the State and agency managements who are deciding whether or not to build next year's bridges out of steel or concrete.

There are also 40 or more fabricators actively soliciting bridge fabrication at any time with adequate plant facilities.

In summary, I cannot visualize a period of shortage or one without competition.

I would like to say here that Congressional action or inaction—which temporarily interrupts the funding of the highway and bridge industry—is a major concern. It causes major discontinuities and disruptions which delay projects and increase their cost, and it can cause business losses and plant inefficiencies, all in the name of politics. Here I'm referring specifically to an event two years ago when we had a hold up in funding because of the Boston tunnel problem and the I.C.E. (Interstate Cost Estimate) problem that we had last year, when this whole thing was put on ice, if I might say.

You really don't know—or maybe you do—but it is a major problem for the mills and the fabricators to have these five months of no bidding. It's really terrible.

Since market development through technological innovation is my bag, as they say, let me explain to you the domestic mills and fabricators have over the last 25 or 30 years spent millions of dollars supporting research into material and design innovations for bridges. It might be a good point here to say that the State of Tennessee is probably the most progressive State in terms of use of new technology in bridge design and construction.

As I have said, this is in recognition of the competitive struggle between steel and concrete for this market. The net effect is that we build a bridge with 60 percent of the steel that it took 20 years ago. Less labor is required, and the designs, materials and details will yield longer life. The steel industry's research is one that continues to bring better bridges to the American road system, and that has been funded by the domestic steel industry as well as certain Government and university agencies.

I would now like to tell you what I think would happen to the domestic bridge fabricating if the Buy America provisions were lifted.

I believe foreign fabricators supported by their mills would target about 40 percent of this market. The larger projects and those where the overall projects has been subdivided into parts, that is the approaches, foundations and superstructures—you can bid a bridge in parts. In these cases, the superstructure steel is a large part of the contract, so that a small saving on steel would register heavily with the general contractors who are bidding the job. Their pricing strategy would be not to offer the full savings of their very low labor cost, but to sell at a price just low enough to force the general contractor to turn away from domestic suppliers.

That price might be as little as $100 per ton, but certainly no more than $200. For now, what I'm saying is that for savings of maybe $150 a ton on 200,000 tons of steel, or just $30 million in a

$15 billion program, we would lose over 2,000 jobs directly, and more indirectly, and add $220 million to our trade deficit by sending that amount of our tax dollars overseas. This wouldn't make sense to me, and I feel that it's too bad that all Government construction funding doesn't contain a Buy America provision. A lot of it does, but it isn't all.

In addition to the sale of foreign fabricated steel, there would be an effort by foreign mills to sell steel directly to domestic fabricators. However, this would not be half so profitable to them as the selling of fabricated steel, since raw steel has a rather low labor content.

There would also be some other problems that I can only touch on. One is quality. While many countries have the capability of producing excellent quality, how would we rule out those without the experience and quality controls necessary to guarantee that the buyer is getting what he ordered? This could be a major administrative problem.

Also, who pays for the increased cost of inspection? Inspection by the States or agencies of the fabricator's plant is usually painstaking and thorough. Who will pay the cost of sending our representatives overseas, to high living cost areas, for these long periods of time?

Summarizing, I feel that the American taxpayer is getting his money's worth under the Buy America provision of the Surface Transportation Assistance Act.

Thank you.

Mr. OBERSTAR. Thank you very, very much, Mr. Flucker, for a splendid statement filled with the kind of documented evidence that we are looking for on the subject of Buy American ramification and its impact on the steel industry in very precise, measured ways. I will have questions to follow up on the points that you have raised, but we'll come to that later.

Our next witness is Mr. Ken Kovack, of the United Steelworkers of America.

This is a labor union for which I have fondest memories and highest regard, since I literally grew up in the lap of the United Steelworkers of America.

Mr. KOVACK. Thank you very much.

First of all, Mr. Chairman, I will speak from a summary, and summarize further. Copies of the summary are available to you.

Secondly, I would request that the record be held open a sufficient time to allow the AFL/CIO to submit comments for the record. They have requested I make that request.

Mr. OBERSTAR. Without objection, the comments from the AFL/CIO will be received, and we'll put it in the record following your testimony.

Mr. KOVACK. Thank you very much.

Mr. OBERSTAR. We'll also note for the record that while Jack Sheehan is the legislative director for Steelworkers, Mr. Kovack is point man on Buy America for the steelworkers union, and has attended numerous meetings late into the evenings and early hours on this subject. He's devoted countless miles of shoe leather and personal effort to this subject. We appreciate your efforts.

Mr. KOVACK. Well, thank you very much.

Your opening remarks, let me tell you, brought back memories of those late-morning hours outside the conference committee doors which you so kindly came out on occasion to brief Leonard Williams of Bethlehem Steel and I, who were trying to monitor this together as to what was happening and how it was happening and what you and your colleagues who were interested in our interests were trying to do. So thank you.

With that, I should proceed here.

Mr. Chairman and members of the committee: the United Steelworkers of America has previously indicated its support of our Buy America laws as a determinant of procurement policy in general and of the Buy America provisions in the Surface Transportation Act in particular.

Although Buy America laws have some duration, they are nevertheless changing in detail and subject to constant debate. We were very pleased with the success in the first session of the 100th Congress regarding the veto override of the Surface Transportation Act. This was a veto initiated in part because of the inclusion of a Buy America provision in the law.

From testimony in previous hearings, the Steelworkers have testified as follows—and I quote from that testimony—"Buy National practices are not unique. America does not stand alone in the implementation of a Buy National program. Other nations have laws, regulations or policies which limit the amount of Government procurement which is available to foreign bidders." We have on other occasions stated that the expenditure of public funds carries with it the social obligation of being sensitive to unemployment. State funds should be treated likewise, and in fact, many States have passed mini Buy America laws as they relate to State procurement contracts.

A continuing and effective buy National policy, we believe, will help to provide the assurances that domestic manufacturers need to determine their course for future investment.

This is especially necessary considering that some foreign nations are continuing to expand their domestic steelmaking capacities in spite of the fact that: excess production capacity worldwide continues to exist; substitutes for steel are growing; and certain consumer products, such as cars, are being downsized.

Also, there is the possibility of the phasing out of the Voluntary Restraint Agreement in 1989 to be followed, we believe, by an increase in steel imports. A Buy National policy, therefore, is a necessary part of the world trade equation.

The first Buy America provisions in the Highway Act of 1978 (P.L. 95-599) were pursued by our union to assure that the domestic steel industry and other domestic manufacturers would participate in supplying the material needs of the highway and mass transit programs. The steelworkers supported the amendment because foreign manufacturers became increasingly the suppliers of steel and related steel products for our highway and mass transit systems. We continue to work for improvements which did occur in 1982 and 1987.

On the issue of jobs, without the Buy America provision in the law, the job loss, we believe, would have been worse. The 1981 Federal Highway Administration report states that for every $1 million in highway construction, steel product needs are as follows: 78 tons of structural steel, 98 tons of reinforcing steel, 9 tons of culvert pipe, 8 tons of piling and joints, 3 tons of cast iron pipe, 2,280 feet of fencing, 1,837 feet of guard rail, and 265 feet of bridge railing. Steel accounts for 10 percent of highway construction cost.

Since the passage of the 1982 Act, it is estimated that nearly 3 million tons of steel annually is used for Federally funded highway and mass transit projects. According to the steel industry, this means 6,000 basic steel jobs, and they are usually our members.

Because the unions, unlike the industry, are not in the business of submitting bids for Government procurement contracts, we are unable to address some of the questions that arise relating to the Buy America program. However, on many occasions we have jointly informed the Congress of problem areas.

These concerns were not only with regard to Buy America provisions in the highway bill, but to its application to other departments or agencies of Government as well.

For example, the DOT wished to restore by regulation a provision which was deleted in the 1982 bill, namely, that for a contract under $500,000 the Buy America provision would not apply. The cooperative response of this committee and the House and Senate Steel Caucus, at the request of the labor-management plea for intervention, was swift and effective. The DOT proposal to change substantially the law by regulation was withdrawn. The change by regulation, if allowed by Congress, according to then current DOT data would have affected 60 percent of the contracts otherwise covered by the Buy America provision, and ten percent of the dollar value of the contracts under the Highway Act were less than $450,000.

Following the $0.05 gas tax increase to the trust fund, even more of these dollars and steel workers jobs would have been at risk had the threshold been reinstituted. It was on the part of DOT a clear indication of its disapproval of Congressional action on that Buy America section of the act.

Further, that clear indication was reinforced when DOT proposed to drop the entire Buy America section in the 1987 Act. This disaffection with the Buy America provision expressed by the Government gives us cause to wonder how seriously DOT implements the law. How often, we could ask, and under what circumstances, does the Secretary use his discretion to waive the Buy America requirements when he determines that their application would be inconsistent with the National interest?

We are not aware of any reports to the Congress in which the agency details the number of reasons for, and the sums involved, in waiver action by the Secretary.

Additionally, the legislative history clearly states, and I quote, "For the purposes of implementing this section of the Act, the Buy America provision applies to the purchases of and or leasing of all equipment." And that refers to that equipment used in construction.

Is the Secretary enforcing Congressional intent, or is waiver by the Secretary a more common course of action? The Congress indeed all of us would like to know. The States, too, are impacted by this intent of the Congress. What precautions do the State Highway Administrations take to ensure compliance?

I would be remiss, I think, given the impact that this report, Fragile Foundations, has on America's public works, if it were not commented on at this point. Although that's not the thrust of this committee hearing. There still are jobs, and I would like to add this comment.

The National Council on Public Works Improvement submitted a report, Fragile Foundations, to the President and to the Congress. I believe it emanated from this subcommittee. One will find few, if any, surprises, as to the condition of, and the need to replace and repair, the Nation's infrastructure, if we are to support future economic growth.

The Council calls on the Nation to renew our commitment to the future and make significant investments of our own to add to those of past generations.

Mr. Chairman, we contend that such a renewal will provide more jobs and a return of Treasury funds to the Government if a Buy America provision is a part of future infrastructure legislation.

The USWA supports a Buy America provision which would rest upon the full employment goals expressed by the Humphrey-Hawkins Full Employment Act. In previous testimony we have stated that "it is hard for companies and their workers, who pay the tax, to understand why tax expenditures should not be spent domestically, especially in times of high unemployment. Fiscal stimulation is a legitimate and recognized means of Government intervention in the economy to create economic growth, and Government purchasing is one means of that stimulation."

Mr. Chairman, I would conclude with those remarks, and thank you very, very much for the opportunity to express ourselves here.

Mr. OBERSTAR. Thank you for a splendid statement with the specifics about the impact of Buy America on jobs, which is the ultimate objective of that legislation. We want to create a market for products that requires production for the American workers.

The subcommittee will stand in recess pending the vote which is now on the House floor. We'll return immediately after that vote and proceed through our witnesses.

[Recess.]

Mr. OBERSTAR. With apologies to the witnesses, we had two recorded votes in succession, and could not leave the floor in time to return as intended. Such are the uncertainties of the legislative program in the House.

We will have time and will be able to carry on without further interruption.

Several of the witnesses have referred to the Council on Public Works Improvement Study. I just want to emphasize that in this context, there is a matter which is of great interest to this subcommittee and the full Committee, that is, the financing of infrastructure.

The decade of the 1980's began with the Nation's crumbling infrastructure on the front page of newspapers and magazines, and a major study by Pat Choate, America in Ruins. There was a great flurry of concern, and studies further investigating the problem of infrastructure and its financing.

Then came the budget crunch. The decade of the 1980's will conclude with the last of the great infrastructure programs on the decline. Except for the Federal Highway Program, which is self-financing, and the Airport Improvement Act, others which depend on direct Federal grants are in eclipse.

Well, this subcommittee initiated a series of hearings on future financing means for the Nation's infrastructure requirements. We had one major set of hearings, and we will have further hearings on this subject, bringing together the private finance sector, construction sector, the various State and local government entities to contribute their thoughts on this subject. We hope to put—we are putting together a coalition of interests that look to the future, not to what is today. They look to the needs of the 1990's and beyond in the infrastructure requirements of this country, so that we can put in place financing mechanisms that will see to the continued needs for construction and maintaining America's inventory and portfolio of public facilities, with a view to keeping the public sector productive so that the private sector, in turn, can be productive.

I would like to turn to a few questions. I know that time is fleeting here. The record has been very, very well made. I don't think there's any need to question the numbers presented in the testimony, although I shall—I know Mr. Flucker, you discounted yourself as an economist and said that you don't have a way of evaluating the economic impact. But we certainly are going to ask the Congressional Research Service, which has done such able work for this committee and other committees of the Congress, in the person of Dr. David Cantor, who's done such highly credible work, to evaluate for us the economic impact of the numbers that you have cited on pages 4 and 5 of your testimony as well as the information submitted in the testimony of the other witnesses.

I think that we need to know, for example, that $625 million in value that you cite on page five—how much of that is then being paid into Social Security taxes, the unemployment compensation fund, and how much is being paid in Federal tax? It may not be possible to compute the State and local tax impact, but we know that they are there, as well.

That $625 million is making an enormous secondary impact. In addition to the general tax revenues and the Social Security and unemployment compensation benefits that flow from it, there are also income dollars that go to the workers who return home and buy groceries and automobiles and houses and again, recycle those dollars in the economy. I think it's important for us to know. That economic impact has not been fully documented in the past. We now have the opportunity to do this.

I think we need to make the record for the next time we consider a Federal Aid Highway program and for other provisions of Federal law where the Buy America language is present.

Those foreign steel products come into this country—while they may be sold more cheaply, and give us temporary benefits, they do not make the same contribution in tax revenues to the Federal Government and all the other social benefits that I have already cited.

That is one thing that I wanted to ask. None of the witnesses has addressed the societal cost of imported products. When steel is produced abroad, often Government ownership or subsidies of those steel industries—we know, it's been documented, and we need not recite that further on this record—but there are also products coming into this country from countries that do not have retirement programs, health benefits for their workers, paid vacations, leave, medical benefits for their workers. All of those are calculated into the cost of domestic steel, because we have such benefits. We are a caring society, and we do provide them.

On the other hand, there are those societal impacts that I mentioned just a moment ago. Have you given some thought to that broader factor? The steel industry, in profitable years, pays taxes. Its employees pay taxes. The industry and its workers both contribute to the Social Security trust fund. With the wages they take home, they buy automobiles and gasoline and drive on the highways and contribute to the highway trust fund.

Mr. FLUCKER. This may be a little surprise to you in the way of an answer, but let me put it this way. This is an unusual societal benefit. If we hadn't had the Buy America benefits in 1982 and if we had lost the major segment of this market, it is reasonable to assume that the steel companies and the steel fabricators would have backed away from research and development in the whole area of bridge technology.

Let me tell you that the fact that we did have that in 1982 gave us the heart to develop a large joint research effort between the Federal Highway Administration and the steel industry—AISI companies and AISC. This is presently under way.

Let me describe this to you. It's approximately a half-scale model of an innovative full-scale continuous steel girder bridge. It's been constructed in the laboratory and is being tested at the FHWA Turner-Fairbank Structural Research Laboratory in McLean, Virginia. It's the first big test in this big new laboratory.

This is one of the largest single bridge research projects ever undertaken. The project is expected to yield far-reaching results and produce significant changes in steel and concrete bridge design, and the construction specifications that relate to this. These changes should translate into direct benefits for Federal Highway Administration and the American public taxpayer in the form of lower costs and better performing steel bridges and concrete decks for every tax dollar.

Enormous amounts of data generated from this project will be studied by bridge engineers for years to come, long after I retire. And it will yield future benefits to the bridge industry. The steel girders in this bridge were designed using a new innovative steel approach aimed at maintaining simplicity of completed steel structures to minimize the total cost, including fabrication, and to provide a better performing structure that's less susceptible to fatigue damage, which is one of our problems.

Fabrication costs and savings of up to 10 percent are possible over steel bridges designed using the more traditional methods. This translates into more money available for additional bridge construction or other public construction of whatever sort.

Maintenance costs will also be less, since the bridge is less susceptible to long-term damage. And modular pre-cast concrete deck panels used on the bridge offer potential savings and better performance for concrete decks and bridge rehabilitation work, which is a major problem for this country right now.

If I may get a little zinger in here, this was one of the programs which may have almost gone down the tubes with the Gramm-Rudman reductions. When the Federal Highway Administration was looking for places to chop money out of their expenditures to meet the requirements of that, we got into a bit of a discussion. In fact, I'm not quite sure that I know where we stand on this thing right now. But the magnitude of this project is such that if you took all the input—the manhours plus the dollars plus what FHWA put in directly in contract administration—we're looking at what we think is a big program that may be $1 million to $2 million.

Now, that's nothing compared to what's being spent on defense research and that sort of thing. But this is one of the kinds of things that could have gone down the tubes if we didn't have this bill.

Mr. OBERSTAR. Thank you for a reference to that research project. I think we will invite you back to elaborate on that matter when this committee resumes its hearings on bridge safety and technological innovation in the Federal Aid Highway Program, which we are going to conduct later on this year. That's part of the subcommittee's work program. We are looking at innovative technology in highway design and construction, and bridge safety.

It's an irony, I guess, of the steel industry that by technological improvements—improving the quality and strength and ductility of steel—you're in a sense working yourself out of a market, reducing the amount of steel that goes into a structure, but it's necessary.

Mr. FLUCKER. It's the competitive nature. The nature of competition.

Mr. OBERSTAR. I noted with interest your reference to—on page two—documentation generating a paper trail of mill test certification reports. This is something very, very important in tracking the performance of both Government agencies and in determining the impact of imported product.

Other Government agencies are not doing as good a job, as we know from our inquiries into a number of other areas such as pipeline safety and aviation safety. They're not doing as good a job of tracking that paper trail. It's often overlooked and downplayed.

Tell us a little bit, if you would, about that paper trail. What does it involve? What types of documentation, and how could it be used effectively? What are the signs of deterioration in the paper trail that permit foreign products to slip into the system?

Mr. FLUCKER. Well, the paper trail is generated this way. Steel mills are what we call self-certifying agencies, in a sense. Steel materials are produced to ASTM standards—that's the American Society of Testing Materials. So, its strength may be called for under an A572 Grade 50 steel. Some document which exists in the public domain.

Steel mills then produce the steel and take a sample of the steel and ship it over to their own research laboratories—their own testing laboratories. But that testing laboratory, even though they own it, is what we call a self-certified laboratory. It's possible for ASTM or anyone else to come in and look at that to make sure that that testing laboratory is being run correctly, that its calibrations are correct—that things are right.

When the ton of steel is shipped from the mill, either in the mail, or sometimes in the truck cab, there is an envelope which goes along with that shipment which says "Steel has been produced according to these public documents' specifications, and it meets the requirements. The galvanizing is of the correct thickness. The tensile strength is correct. The chemistry is correct." Whatever the specifications required.

So here this piece of paper goes along, and it's self-certified, because it says Bethlehem Steel Corporation's Mill at Sparrow Point did the testing, or U.S. Steel Company's testing laboratory did this thing. So here this piece of paper goes along with the company's reputation on it.

That has to then, because of quality certification, possibly as required by the State or some other agency, be in the file and literally travel with that ton of steel. Finally, that piece of paper gets filed with the State Department of Transportation or whoever is the final owner of the bridge.

Even to the point that if the bridge has problems 15, 20 or I think on a bridge which was 60 or 70 years ago— we could document what kind of material that was, what mill produced it, and what the qualifications were.

So that's how that paper trail works. I don't see it degenerating within the steel industry.

Mr. **Oberstar**. Now, that's significant because our next two sets of hearings—or our next two hearings—are going to involve other programs. UMTA, for example, may not have such a clear-cut paper trail. I think that you could submit for our files—not for the hearing record—a sample of that documentation. I think that would be very useful for us to review and to pursue with the Urban Mass Transit Administration and with your brethren producers in the assembly of light and heavy rail vehicles. They have very, very great difficulty tracking components that go into the assembly of a rail vehicle, and of a subway station, for example, in a rail system.

Since this seems to be a very airtight paper trail, self-certifying might give us some leads to look into and correct some loopholes in the other programs.

Could you also elaborate on the roll marks, on the domestically produced steel shapes, referred to on page three? I think Mr. Kovack will be sensitive to the fact that many workers in the steel industry who may be involved in fabricating machine shops and so on, have found and reported to us that there is fraud on the roll marks. Importers have erased the roll mark, or somehow removed it. I know we've received a number of reports of that kind.

Describe that in further detail and tell us what the significance is for determining country of origin, please.

Mr. **Flucker**. Well, for years, in most domestic mills—with few exceptions, most of the newer what I call mini-mill people—the older mills always had roll mark identifications. These were—what you do is take the final roll and you sort of engrave into it a pattern so that when this hot roll steel which is sort of still red hot going through that last pass, some of that steel will move up into that pattern. As it goes out, then that pattern remains in it.

It's not done in plate products, but on structural products. This would then give you identification as to who produced the product. These products very often look alike. This goes back to the days of Andrew Carnegie—the mills historically wanted to have the roll marks on their product, particularly for rail product, but then they started putting it into structural shapes.

For purposes of identification and importation, and identification for inspectors who are looking at whether a product is domestic or foreign—AISI produced this little booklet so that you can identify it. If you can spot a roll mark, you can say, well, that is so-and-so, that was made by such-and-such mill.

Now, the area of fraud is one that I'm not competent to talk about. I'm not into the enforcement of this thing, other than to say that I do believe if you came upon something where you thought you had something where a foreign roll mark had been removed by grinding, it's possible to go in there with an acid etch and the thing will lift up again because the grain structure being different around the area where the roll mark was put in. But again, that's the technique.

Mr. OBERSTAR. I know that in northern Minnesota, the steel—the Taconite industry—were doing structural work. The steelworkers on the mill sites thought there was something funny about the steel that they were putting up and refused to handle it. They required an inspection. The companies were astonished that domestic U.S. Taconite producers had purchased from a steel service center foreign steel that had been fraudulently altered.

There is a way to track—and I think this is important for us, to be able to have verification.

One final question, and I'll turn over to Mr. Clinger.

Mr. Kovack, later the Federal Highway Administration will say that in their opinion the Buy America restrictions have had an insignificant impact on imports of foreign steel. Could you respond to that, please?

Mr. KOVACK. Mr. Chairman, I'm sure that the way that the Department of Transportation has felt generally about that might be contributing to their statement.

What the actual figures are, I don't know, and what the overall impact is on Buy America, I'm not sure. I would certainly dig that out and find it for you and get it back to the committee as quickly as I can, if that would be helpful for the record.

One other thing that I would like to comment on is in relation to the question you just raised about roll marks. Several months ago, Mr. Sheehan and I met with Bill Colby, who was at the time doing some work with various American industries about counterfeiting. One of the persons that was participating in that meeting was a representative of Volkswagen of Pennsylvania, who reported in that particular meeting that parts that were supposedly made in Germany for assembly in the plant in Pennsylvania were being duplicated and imported as counterfeited parts. So we had two sources of imports.

The point that I would really want to make is this: there may be some profit to the committee to suggest that Mr. Colby might be one to be conferred with as to what the progress, if any, is with that particular committee. You know, he's well known and a legitimate source. He has a good reputation, and he's been in Government for several years. I think that a person with his qualities and character and knowledge might, if he's still into that area, and this has been close to two years ago that we met with him on this issue—might be able to make some contribution as to what is coming in as counterfeited steel in this case.

Mr. OBERSTAR. Thank you very much for that suggestion. We'll follow up on it.

The gentleman from Pennsylvania, Mr. Clinger.

Mr. CLINGER. Thank you very much, Mr. Chairman.

Let me play the devil's advocate for a minute. It could be suggested that in view of the fact that the U.S. dollar is now back in parity with the rest of the world's currency, and in view of the fact that over the last seven or eight years the United States steel industry has done a great deal to put itself in a more competitive posture, by getting rid of the fat and getting down to the point where the industry is extraordinarily efficient and productive, we no longer need a Buy America provision.

In other words, we should now be in a position to be pretty competitive with anyone out there. In fact, we are selling more now in world trade than we have in the past. How would you respond to that kind of an argument? Any one of you?

Mr. HOPPE. Well, thank you.

I think that the first thing I'd want to say—and there are so many things that you could say—is that yes, the foreign currencies are stronger in Japan and Europe. But we still have a very tough competition situation with Canada, with Korea, and with a number of other countries that have significant fabrication activities and have shown a great interest in the U.S. market.

Whatever gains we have made in our own productivity, whatever gains we have made because of the stronger dollar against other currencies, these are still extremely competitive countries that have favorable exchange rates in terms of the U.S. dollar. So we still need strong Buy America protection for goods from those countries.

Mr. FLUCKER. If I may add a qualifier, there are certain products used in highway construction programs in steel that have a very low man-hour time input, like reinforcing bars. Probably the domestic producers would be in very good shape to begin to compete in the world market on that because it's a low man-hour thing. The other guy's bringing in one man-hour or two man-hours and we're only using two man-hours per ton, so the difference in rate scale is not that great. You have to recognize that about 60 percent of the cost of a ton of steel coming out of the mill is in the melt. The energy that it takes to do this—the limestone, the coal, the moving, the transportation. Rolling the steel, another man-hour—that's the kind of thing where probably right now, we could compete very well.

But, if we look at a bridge, where I told you 25 man-hours per ton of bridge—when you think of all the detailing and all the other stuff that goes in there, and somebody else is hiring his labor at $1.00 or $2.00 an hour, versus a domestic scale—then it's much easier for them to compete on these high component types of products.

Just to give you an example—we see them today active on those projects, bridge projects, where there is no Buy America protection. Only ten days ago, the Harris County Toll Road—that's in Houston, Texas—Authority put out to bid about 10,000 tons of bridge steel on an interchange. The interchange also happens to be an interchange with an interstate, but it's all going to be State funds.

The numbers I gave you were actually written before that bid, but the bidding on that indicated a little over $1,300 a ton for domestically fabricated steel, quoted by a domestic fabricator, and about $1,100 a ton by two foreign groups. One Japanese and one Korean group quoted this.

They're interested in this market, and they're ready to compete at any price.

Mr. KOVACK. Mr. Clinger, too, if I might add to that. We've been going into lowering the value of the dollar for the third year now. Last year we experienced a $171 billion dollar trade deficit. Now, the last year that we had a trade surplus in manufactured products, to which Buy America in the case of the Surface Transportation Act applies, was $5 billion in 1981. That has grown in the manufacturing area, that segment that related to manufacturing, to $153 billion in 1987.

When we talk about Buy America in that context, and in this case, the Transportation Act and in particular as it relates to steel—we've got some concerns about the impact of the lowered dollar in that respect.

Mr. CLINGER. Let me ask the panel this. Is the difference primarily in labor costs? Or are we now competitive in terms of plant equipment, modern production techniques, etc. with our major competitors? I know I've visited steel facilities in Taiwan that looked very modern and superefficient to me. I'm just wondering—as a result of the squeezing out that has gone on—if we are now competitive in terms of plant equipment and that the primary differential that would still require the Buy America provision is the disparity in labor costs. Or, is it a combination?

Mr. HOPPE. The International Trade Commission has just finished an extensive study on the competitiveness of the U.S. sheet and strip steel industry. This is a good proxy for what would be happening in plates or structural shapes or anything else. They looked at the steel producers in Europe, Canada, Brazil, Japan, and Korea, in comparison with the United States. Their findings were that we have made great strides in labor productivity, and we have put in a number of modern facilities. But generally speaking, both in Europe and in Japan, and of course Korea now with such new facilities, the caliber and the breadth of the modernization of facilities in those countries are still ahead of ours.

Our industry's efforts have been limited because of lack of funds. There's still more that needs to be done to upgrade and modernize and streamline the American industry.

Mr. CLINGER. To what extent does the World Bank still finance steel production throughout the world?

Mr. HOPPE. More than they should. [Laughter.]

Mr. CLINGER. It's still a problem, is it?

Mr. HOPPE. Just the other day it was $400 million for the Mexican steel industry. And there were all sorts of reasons that could be cited why Mexico deserved these funds to help restructure and modernize their industry. But it's still a problem for us. It doesn't help anybody to give U.S. taxpayer subsidized money to a foreign country to produce a good that is in oversupply where there is serious world competition.

Mr. CLINGER. So what you're saying is that we really do have worldwide excess capacity at this point in time?

Mr. HOPPE. Yes, we do.

Mr. CLINGER. We don't need to be encouraging any additional production. Maybe we ought to talk to our former colleague Barber Conable about this problem.

Mr. HOPPE. It would be worthwhile.

Mr. CLINGER. Let me just ask a couple of other questions.

In December, Congress passed legislation which prohibits foreign companies whose governments discriminate against U.S. companies in their public works projects from participating in Federally funded public works projects in this country. I'm wondering if any of you have any estimates of the benefits that might accrue to U.S. steel manufacturers from this particular ban? Have we got any evidence at this point? It's probably pretty early to get any kind of data as to what it might mean, but would you have any conjecture as to what it might mean to U.S. companies?

Mr. HOPPE. I think it's much too early for anything to have resulted from that legislation. It's single jobs that are coming along.

I do want to say that, speaking for Bethlehem and for AISI in general, we have great interest in supplying steel for Japanese public works projects. We have committed to the Department of Commerce that if they are successful in opening that market, we will make steel available to domestic fabricators to supply for those projects.

Mr. CLINGER. In this regard, as you know, Japan is currently the only country on the list to be denied participation in the U.S. public works project.

But in the area of steel construction, are there other countries that you could cite that you think are guilty of discrimination against U.S. firms that might be considered for inclusion on the list?

Mr. HOPPE. I really can't comment on that.

Mr. CLINGER. If you might be able to provide something like that for the record, it would be helpful to us.

Thank you, gentlemen.

Mr. OBERSTAR. Thank you very much, Mr. Clinger, for your reference, in particular, to the World Bank financing. I have had my differences with the World Bank going back to their financing of a major iron ore development in Brazil. It seems that all you have to do to get money from the World Bank is to go in debt as a Nation. Go into big debt, and then the World Bank rushes in to bail you out by getting you deeper in debt, to help you produce a new product in another industry sector that is already in oversupply in the world marketplace and further add to the miseries of this Country.

I'll not go into that further at this point.

I'd like to ask this panel if they could stand by while we take the Federal Highway administrator who has a time constraint. There are a few more questions we'd like to pursue, but I would like at this time to invite Mr. Farris—because I know he has a deadline that will not await stretching.

Our next witness, then, is Mr. Robert E. Farris, Acting Administrator, Federal Highway Administration, accompanied by Mr. David S. Gendell, Chief Office of Highway Operations, Federal Highway Administration—trying very hard to become highway administrator.

[Witnesses sworn.]

Mr. Oberstar. We greatly appreciate your patience throughout this long morning of unanticipated delays, and the testimony you're about to provide for the committee.

Please proceed.

Mr. Farris. Mr. Chairman, in the interest of time, I have submitted my statement to you in full. I'll try to outline, if I could, rather than read to you my statement today, to emphasize the questions that you asked me to address in your letter of invitation sent to us. I'll summarize what is contained in my statement and the pertinent facts that I think lie before us and this committee relating to the Federal Highway Administration.

One of the significant things that I believe we need to point out is the difference that exists between us and UMTA. There are two different rules, and there was a purpose for that.

The vast majority of the consumption of steel in the federal-aid highway program is for construction purposes and not for manufacturing. So, the consumption of manufactured products would be so miniscule in what we might consider on our side that we didn't deem it necessary to include it in our rules, but rather we focused on the consumption of steel in our construction side.

You asked whether the enforcement program is being carried out. I would simply point out that we were looked at very carefully by the Office of the Inspector General in 1985 and they did conclude that our oversight and enforcement procedures were quite adequate. I don't know whether you've had the privilege of that report or not, but the OIG did complete their analysis of the implementation of the Buy America provisions in regard to the Federal Highway Administration, and their findings were that they were adequately implemented and our enforcement procedures were adequate.

We do have a fairly ordered system in place to make sure that these provisions are in fact imposed and requirements that we've placed upon the States are made a part of the contract provisions. We do in fact even provide the States with a training program, which Mr. Gendell can show you is part of our overall contract supervision activities with the States. I believe that we can honestly say to you that I see at this point no major problem in the implementation of the Buy America provision as far as the Federal Highway Administration is concerned.

What impact has this program had on the United States economy? Well, we've had a little interesting exchange this morning about the amount of steel that's actually being consumed in program administration by the Federal Highway Administration. We think it's somewhere around one percent. I believe that with the current data that we have available to us, that's a fairly accurate estimate. Even though it's a small percentage, it is a major portion and a good base, as I think the industry would tell you, in the steel industry. As far as the total impact on the Nation's economy, I would say that as far as we're concerned at this particular agency, it's somewhat minimal.

Regarding the current enforcement actions, I believe that we have adequate provisions in place to make sure that we are monitoring this very carefully.

You asked about the waiver provisions. To my knowledge, there have been about six waivers. None of these were nationwide, but on specific products that are not available to us domestically, like bearings for a bascule bridge, certain specialized bolts, and that sort of thing. But there have been no blanket waivers issued in our implementation of this particular act.

So, with that, let me stop and deal with your particular concerns, Mr. Chairman. Maybe we can move this along to answer your specific questions.

Mr. OBERSTAR. Thank you very much, Mr. Farris. Your complete statement will be included in the record immediately following your deliberate remarks.

You were quite right. UMTA and the Federal Highway Administration do approach Buy America differently, because they are operating two different laws. I think that distinction must be made clearer for the record.

You did say just a moment ago in your testimony on page three, where it further elaborates on the one percent figure—one percent of steel used in the U.S. goes into highway construction. Other testimony today has indicated a range of three to four percent.

What is the source of that one percent figure of the Federal Highway Administration?

Mr. FARRIS. It's interesting, in taking the percentage of steel per $1 million worth of construction cost is one of the areas which leads to differences in the estimate. They may take our total obligations, of funds, where I think they use a figure around $13 billion—but a good portion of that money is actually spent for engineering and right-of-way. So you have to look at what's actually outlaid for construction, and that's more like $10.7 billion.

Then, the actual consumption of steel per $1 million expenditure has been going down as we've been moving more towards maintenance and reconstruction than primarily new construction activities. If you use old figures, you could be off a little.

I'm not sure that is a significant area of concern that we have, but our data is perhaps more current in terms of making that statement than some of the other data that's been presented so far today. I'm not sure that we're that far off. We just got far off in our base analysis. If you use our total obligations, that'll throw you off in terms of percentages. You've got to look at what we actually expend for construction and exclude that which we spent for engineering cost and right-of-way acquisition.

Mr. **Oberstar**. Well, I think it's important for our purpose in this committee—not just in this hearing, but for the other hearings that we conduct—to be exact.

Mr. **Farris**. We can submit to you——

Mr. **Oberstar**. To get the facts as closely as possible.

What I'm going to do is to ask our majority/minority staff to get together with all the witnesses, including the Congressional Research Service, and reconcile these differing numbers. It's very important for the purpose of the Buy America language to get reliable numbers. What you say carries a certain weight in the public, and what the American Iron and Steel Institute says carries a different impact, and CRS—it doesn't serve the purpose of this Act if we have four or five entities referring to four or five different numbers.

I think we want to reconcile that figure and be sure.

[Congressional Research Service analysis follows:]

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

June 15, 1988

TO : House Committee on Public Works and Transportation
Subcommittee on Investigations and Oversight

FROM : David J. Cantor
Specialist in Industry Economics
Economics Division

SUBJECT : Reconciliation of Estimates of Steel Usage in Highways and Bridges Presented By Witnesses at Subcommittee Hearings on Enforcement of the Buy America Provision of the Surface Transportation Assistance Act of 1982, March 31, 1988.

This memorandum responds to your request for a reconciliation and/or explanation of the different estimates of steel usage in highways and bridges at the Subcommittee's hearings on March 31, 1988, on enforcement of the Buy America Provision of the Surface Transportation Assistance Act of 1982. During the hearing, the Subcommittee Chairman, Representative Oberstar, requested the witnesses and staff to confer with me to reconcile, or at least explain differences in the various estimates of steel usage in highways and bridges.

As a result of discussions with Subcommittee staff and witnesses, and on the basis of additional data that has come to my attention, it appears that the amount of steel used directly in highways and bridges is in the range of 2.0 to 2.5 million tons annually. Too many factors prevent greater precision in estimating steel usage. For example, severe weather conditions could reduce construction and, therefore, steel usage in any given year; competition from concrete could affect the quantity of steel input; to the extent that maintenance and repair activity is great relative to construction of new highways and bridges, steel usage will be reduced. Thus, we present a range within which the amount of steel used directly in highways and bridges is most likely to fall.

Three of the five witnesses at the hearing gave estimates of direct steel usage in highway and bridge construction within the 2.0 - 2.5 million ton range. These estimates were given by representatives of the Congressional Steel Caucus (the Honorable Joseph M. Gaydos), the American Iron and Steel Institute (William Hoppe), and the American Institute of Steel Construction (Ronald Flucker).

Mr. Flucker tended to be on the high side of the range, estimating that 2.0 million tons of steel were used in highways and another 0.5 million tons were used in bridge construction. In a telephone conversation with him on June 13, 1988, Mr. Flucker indicated to me that his estimate of total steel use in highway and bridge construction might well be on the high side. Nevertheless, he felt it was within the realm of reality, and was comfortable with his estimate.

Mr. Hoppe's estimate of direct steel input to highway and bridge construction was 2.0 million tons. Based on information obtained from the American Iron and Steel Institute on June 10, 1988, this estimate is based on a steel usage factor of 121 tons per million dollars of expenditure, and total spending of about $16.6 billion. [1] The estimate of the steel usage factor was for the years 1982 through 1984.

The Congressional Steel Caucus estimate of 2.5 million tons of steel used in highway and bridge construction was developed from information supplied to the Caucus by the Congressional Research Service and by the American Iron and Steel Institute. [2] The Caucus estimate was based on an analysis of data contained in the 1977 U.S. Input-Output tables; it also assumed expenditures on highways and bridges in the range of $13 to $14 billion.

Two witnesses presented estimates of steel usage in highways and bridges outside the range of 2.0 to 2.5 million tons. They were the representatives of the Federal Highway Administration (FHWA) and the United Steelworkers of America (USWA).

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[1] By telephone, June 10, 1988.

[2] By telephone, June 14, 1988.

The Federal Highway Administration estimated that about 1.1 million tons of steel are being used in highway and bridge construction projects that are subject to the Buy America provision. FHWA estimated that about $10.7 billion is the approximate expenditure on these projects, and that the steel usage factor for the years 1984 through 1986 is 99 tons per million dollars of spending. [3] The relatively low FHWA estimate of total steel usage in highway and bridge construction is explained mainly by an assumed level of spending that is about half of the assumed expenditure of the American Iron and Steel Institute and the American Institute of Steel Construction. Officials of the FHWA agree that, if total spending on highways and bridges by Federal, State, and local authorities was used in its calculations, the total steel usage estimate would be in the range of 2.0 to 2.5 million tons. [4]

The United Steelworkers of America estimated total steel usage in highway and bridge construction is about 3.0 million tons. The USWA based this estimate on the 1981 steel usage factor of 132 tons per million dollars of expenditure on these projects.

Subsequent to the hearings, additional data have come to my attention regarding the amount of steel directly used in highway and bridge construction. At the John P. Murtha Steel Symposium sponsored by the University of Pittsburgh at Johnstown, the Deputy Administrator of the Federal Highway Administration, Mr. Lowell B. Jackson, presented estimates of direct steel usage in highway and bridge construction from 1981 to 1986.[5] In 1981, about 2.2 million tons of steel were used in highway and bridge construction; in 1982, usage fell to just under 2.0 million tons; in 1983, steel use rose to just over 2.0 million tons. Mr. Jackson estimated steel use in these projects to be 2.1 million tons in 1984, and about 2.2 million tons in 1985 and 1986. His estimates of the steel usage factors were: 1981 - 132 tons per million dollars of expenditure; 1982 -126 tons; 1983 - 121 tons; 1984 - 111 tons; 1985 - 99 tons; and, 1986 - 91 tons.

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[3] By telephone, June 14, 1988.

[4] Ibid.

All of the estimates of steel usage in highway and bridge construction presented at the Subcommittee's hearing on March 31, 1988, applied to direct steel inputs to such construction. They do not attempt to estimate the indirect steel requirements to produce these steel inputs. Based on our analysis of the impact of new highway construction that we undertook for you,[6] it would appear that total direct and indirect steel requirements for highway and bridge construction could approximate 2.9 million tons per year. The indirect steel usage could be in the range of 540,000 tons to 730,000 tons.

This estimate was arrived at by dividing the increased output of the steel industry in response to an increase in highway construction of $1 billion by the steel price in 1982 -- $446 per ton of carbon steel; both values were expressed in constant 1982 dollars. An estimated 122,000 tons of steel per billion dollars of spending on highways and streets was obtained. This estimate was multiplied by the estimated total expenditure of highways and bridges in 1986 -- $23.7 billion. The direct steel inputs to highway and bridge construction were estimated by multiplying the total expenditure by recent steel usage factors, 99 tons per million dollars of spending for 1985 and 91 tons for 1986. Using the 1985 steel usage factor, direct steel inputs to highway and bridge construction would be about 2.4 million tons; the lower 1986 steel usage factor of 91 tons yields an estimate of total direct steel use in such construction projects of about 2.2 million tons.

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[5] These estimates were presented in a speech at the John P. Murtha Steel Symposium at the University of Pittsburgh at Johnstown, Johnstown, Pennsylvania, June 1, 1988.

[6] U.S. Library of Congress. Congressional Research Service. The Impact on the Economy of Federal Spending on Highways and Streets. Memorandum, by David J. Cantor, March 28, 1988. Washington, 1988. 8 p.

These estimates suggest that, even with declining steel usage factors, if spending on highways and bridges were to be at levels approximating $20 billion, total direct steel use in such projects would be in the range of 2.0 to 2.5 million tons. Most of the witnesses at the Subcommittee's hearing on March 31, 1988 gave estimates in this range. The two estimates that fell noticeably outside this range are explained by either an assumed level of spending significantly lower than the spending levels of most witnesses or a significantly higher steel usage factor than currently prevails. Changing these assumptions would bring these two estimates into line with the others.

Mr. **Farris**. If it would help the committee, we would be glad to submit our database and how we arrived at our estimate and give you our information to assist in any way we possibly can to bring those two points to a more reasonable relationship.

Mr. **Oberstar**. You have achieved something of a milestone in hearings before this committee, and at various Government agencies under our jurisdiction, by bringing praise of other witnesses for the administration of the Act. We don't ordinarily hear that kind of compliment.

It's a credit to the Federal Highway Administration that it has administered this act fairly and effectively.

Have you considered ever putting together an industry-labor advisory group to discuss administration of the Buy America act?

Mr. **Farris**. Not outside of our own operating family, Mr. Chairman. We do work very closely with State administrative activities, as I mentioned earlier, and we do have training programs available. But to get beyond that, we do not.

Mr. **Oberstar**. How do you coordinate with the States agencies for the administration of the Buy America act? Is there some formalized mechanism by which——

Mr. **Farris**. That's Mr. Gendell's direct responsibility, so I'll let him respond to you.

Mr. **Gendell**. Mr. Chairman, we normally work through our field structure. We have guidance in a regulatory sense regarding Buy America. We follow that up with a document we call the Federal Highway Program Manual. This contains directions to our field offices; we supplement that with manuals and memoranda and training courses.

Then, through our field structure, our offices in each of the State capitals work directly with the States to make sure that the Buy America requirements as well as the other requirements of the Federal Aid Highway program are enforced. That's our primary method.

Mr. **Oberstar**. It's very important to have that liaison between the Federal line of administration and the State agencies, because they're on the working end of the highway program. They have to carry it out and let the contracts and the bids, supervise the construction work once it swings into action—that coordination is very important.

Mr. **Gendell**. I might add, Mr. Chairman, that we also work quite closely with the American Association of State Highway and Transportation Officials. We provide the secretary their standing committee on highways as well as their bridge subcommittee and their highway construction subcommittee, and through this direct liaison with AASHTO, we also discuss Buy America requirements and make certain that requirements are understood by the States.

Mr. **Oberstar**. Well, I raise that matter because of one instance of notably different interpretation by a State highway agency of a provision of Federal law or regulation or both. That was the matter of cofferdams for bridge piers.

As I recall, the contractor felt that because the coffer dam being put in place was using foreign steel that the State interpreted to be property of the contractor, to be removed upon completion of the project, that it did not have to be submitted to the requirements of the Buy America Act. The contractor said, well, when we're finished with the project, we'll remove the steel, and it's still our property, so we don't have to buy American steel.

Ultimately the matter was resolved, but in fact, in most cases, that steel is left in place.

Mr. FARRIS. That's absolutely correct, and where it is in place, we enforce the Buy America provision.

Mr. OBERSTAR. Yes.

And in fact, it is part of the project and should be enforced.

Mr. FARRIS. The State was trying to interpret that that was not an integral part of the bridge and should be excluded. We didn't agree with them.

Mr. OBERSTAR. And you came, in our judgment, to the right conclusion. Federal funds followed through.

Do you—in fact, the Federal Highway Administration send out to all the district engineer offices notices about problems of this kind and advisories so that they would all be alerted in their coordinative work with the State agencies.

Mr. FARRIS. Absolutely. When a special glitch like this develops, we do make sure that our regional and divisional offices are adequately alerted to it, so that as it occurs under their jurisdiction, they can adequately deal with it.

It's like the matter where we uncovered the counterfeit bolts that have recently been introduced into this country. We gave an alert bulletin describing what we'd discovered and putting special emphasis to be on the lookout for them.

Mr. OBERSTAR. Would you submit for our hearing record a copy of the memorandum sent out in consequence of that cofferdam problem?

Mr. FARRIS. Sure.

[The following was received from Mr. Farris:]

U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Washington, D.C. 20590

Subject: Buy America

Date APR. 25 1986

From: Associate Administrator for
Engineering and Program Development

Reply to Attn of: HHO-32

To: Regional Federal Highway Administrators
Regions 1-10

It has recently been brought to my attention that a material certificate from a U.S. manufacturer does not guaranty that the origin of steel is domestic. It has been reported that foreign steel has been shipped into the United States in bars or plates then rerolled into different shapes, with a material certificate being reissued with the chemical analysis on a U.S. manufacturer's letterhead. This new material certificate was then assumed to represent U.S. manufactured steel material. To be considered domestic steel material all manufacturing processes to the steel material must occur in the United States.

Please make your States aware of the potential problem of accepting standard material certificates as proof of domestic origin of steel without further verification/documentation. If any of your States are having problems in this area, please notify HHO-32 at FTS 426-0355.

Rex C. Leathers

Rex C. Leathers

Mr. OBERSTAR. We'd appreciate having that.

Mr. GENDELL. I believe that Mr. Farris was talking in a general sense about our enforcement of the Buy America Act. We'd be happy to provide a memorandum illustrative of various problems that have been uncovered, with respect to Buy America.

In the case of the cofferdam situation, we didn't feel a specific follow-up memorandum was necessary, in that our provisions clearly state that any steel to be permanently incorporated into the job must be of American origin. Therefore, there was no question of that in our minds, really, or in the State's mind in this particular case, once the full facts were developed.

If we are talking about the same project, the initial confusion came about because the project engineer was not aware that the steel would remain in place permanently. Therefore, he gave an incorrect answer. Once it was discovered that the steel would remain in place permanently, I believe the answers were consistent from the State as well as Federal Highway Administration that Buy America did apply.

Mr. OBERSTAR. Very good.

Does that apply to the Talmadge Bridge in Georgia?

Mr. FARRIS. That's the one. Yes.

Mr. OBERSTAR. A couple of other questions.

Another matter of concern to me is the segmenting in construction of highway projects. To my great astonishment some years ago, when we were doing the Arrowhead Bridge, a bridge is not built in its entirety, but in a series of contracts.

Now, there's a total dollar amount committed to a particular bridge project. Then, that total dollar amount is broken up into a series of contracts beginning in this particular case—the bridge between Duluth and Superior, MN, and I assume it's the same with others—with the center arch span. Then other segments were added.

There was an attempt prior to the 1982 Act with this project to so segment the construction that the Buy America provisions—admittedly weaker than they are today—would be vitiated.

Now, how do you do this segmenting of contracts? Are you watching to make sure that segmenting does not erode the purpose of the Buy America Act?

Mr. FARRIS. That's correct.

Segmenting is permissible for several reasons. One, if it's a matter of funding, we do allow that to occur on road construction, where they can do a piece of it and come back and do another piece of it as funding is available.

Secondly, we'll do it on bridge construction sometimes to allow for specialized contracts and contractors to bid on their particular specialty. That way, you can get a little better coordination of activities and a lot of times a better product in the end if you have those who are specialized in a particular field handle a particular segment.

We would not allow that segmentation to occur, however, for purposes of avoiding Buy America or other requirements that we have to impose on the use of Federal funds. The same would apply to our environmental concerns, EIS requirements, and other things that we have to apply. That is not permissible.

It has to have a demonstrated purpose other than the avoidance of our regulations.

Mr. OBERSTAR. Thank you very much. I appreciate that reassurance.

The final question is that of the well-known and much discussed $500,000 threshold. The Federal Highway Administration at the instigation of OMB a few years ago attempted to institute a $500,000 threshold, and in fact there were proposals by some of our colleagues to lower the threshold below that amount so that Buy America doesn't apply. Those initiatives were defeated, and it's not now in law. There might be some effort to do so again.

Why was that $500,000 figure chosen? And what would be its significance for the Federal highway program?

Mr. FARRIS. I'm not sure that was a major issue for us. I'll let Mr. Gendell address you, because I wasn't here when that argument was presented.

It's not a current proposal as far as we're concerned.

Mr. OBERSTAR. That's correct.

Mr. GENDELL. The 1978 Buy America provision actually legislatively included a $500,000 threshold. Then, that made the program somewhat easier to administer in that roughly half of the projects, therefore, were exempt from the administrative aspects of Buy America.

While half of the projects were exempt, those fall projects really contained very little steel. We found that while we were exempting half the projects, we were only exempting about four percent of the steel used in highway projects by that threshold.

Then, when the 1982 amendments came along, we decided administratively to continue that threshold in order to save the administrative and enforcement burden. Upon reflecting on that, and being advised by the Steel Caucus in Congress and others, as you're aware, we dropped that threshold provision and now enforce Buy America on all contracts.

Mr. OBERSTAR. I might observe, in conclusion, that time and again Federal government agencies approach a matter of this kind and say, you know, that's only one percent. That's only three or four percent. That $500,000 is only four percent of the steel consumed and it's a little like being nibbled to death by ducks. A little bite here, a little bite there, and pretty soon you're bleeding from a number of sources, and those one percents and two percents keep adding up. We've seen this over and over again in our work on this committee. And I have to say that we're going to be very concerned about the one percent and the two percent and the little bits here and the little bits there that amount to an erosion. Pretty soon the whole hillside has eroded away. We don't want that to happen.

Mr. Clinger?

Mr. CLINGER. Thank you very much, Mr. Chairman.

Thank you, gentlemen, for being here. It's a pleasure to see you. I apologize for not having been here for your testimony which I'm sure was excellent.

Mr. GENDELL. Well, thank you, sir.

Mr. CLINGER. I have a question that one of you might give an opinion on. The previous panel testified about the notion that perhaps Buy America inhibited competition—that there was the possibility of much higher prices for things because of the lack of competition. They said that such was in fact not true, and that there is a very significant and highly competitive situation within the domestic steel industry for highway projects.

Would you concur with that?

Mr. **Farris**. Congressman Clinger, they not only have the competition within their own industry, but they must compete with other products, particularly in the area of bridges.

As you know, we do have competitive design requirements in major bridge structures that cause steel to compete with concrete. In rebars, we're now finding that the domestic rebar supply is really quite competitive. We see that that is not a major problem in the industry.

Mr. **Clinger**. That brings me to an aside which is totally irrelevant to the purposes of this hearing, but I come from a section of the world that grows a lot of timber, and the folks up there think that you could make some pretty good and long lasting bridges, out of wood. But their problem, they say, is that there are no specifications or standards to guide them.

Mr. **Farris**. That's correct.

Mr. **Clinger**. So there is no way for them to really get into the game.

Is that an accurate assessment?

Mr. **Farris**. That's an accurate assessment. You know, I had a lot of timber bridges in Tennessee that I ended up replacing.

We look for standardization of use in materials and longevity and cost of investment, and historically we're now finding that concrete and steel just have a longer lifespan than those wooden structures, as good as they were at the time they were built.

Under the modern-day stresses that we put on our structures, we would prefer to go with steel or concrete.

Mr. **Clinger**. You testified that one possible action FHWA could take upon discovery of a Buy America violation would be to require the removal of the foreign steel. We're aware that in the past, FHWA has required the removal of cofferdams constructed with foreign steel in the past.

Mr. **Farris**. That's correct.

Mr. **Clinger**. Have there been any instances in which the Agency has required the removal and replacement of a major steel structure other than a cofferdam?

Mr. **Gendell**. I'm not aware of any major steel structures. The situation is such that I believe the likelihood of incorporating a substantial volume of foreign steel into a Federal Aid highway project is nil.

We have had cases where a contractor has inadvertently purchased steel that turned out to be of foreign origin. This was uncovered, in some cases, by the contractor, or in some cases by the State and the Federal Highway Administration.

Mr. **Clinger**. Before it was included, or after?

Mr. **Gendell**. After it was included.

Mr. **Clinger**. After.

Mr. **Gendell**. In those cases where it was feasible, we required the removal of that steel. It would be a very small quantity of steel.

In isolated instances where, for example, that steel might have been a beam in a bridge, and the bridge had been subsequently decked with concrete and where it was completely impractical to remove it, we've allowed the steel to remain in place at no cost to the Federal Government.

Mr. **Clinger**. Okay, that would be the other option, I gather, to refuse to pay?

Mr. **Gendell**. That's right, but we do not use that option unless it's the only logical thing to do.

If it's at all feasible, we require the removal of the steel rather than——

Mr. **Clinger**. The preferred, in fact, nearly exclusive method, would be the removal of foreign steel rather than the withholding of funds.

Mr. **Gendell**. Yes.

Mr. **Clinger**. Thank you, sir.

Mr. Chairman.?

Mr. **Oberstar**. Thank you very much, Mr. Clinger.

With respect to wood in structures, I'm all for that, so long as the timber is grown on the iron ore range of northern Minnesota. [Laughter.]

As well as in Pennsylvania.

No further questions, Mr. Farris. We will have some further questions that we will submit in writing to your staff, later.

[Questions submitted, and the answers thereto, follow:]

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20590

OFFICE OF
THE ADMINISTRATOR

May 11, 1988
IN REPLY REFER TO:
HCC-10

The Honorable James L. Oberstar
Chairman, Subcommittee on Investigations and
Oversight
Committee on Public Works and Transportation
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Pursuant to your request of April 20 we submit herewith answers to the follow-up questions from the Subcommittee on Investigations and Oversight hearing on Buy America on March 31.

We will be pleased to submit any further information if needed in order to assist your oversight of the Buy America statute. An identical letter has been sent to Representative Clinger.

Sincerely yours,

Robert E. Farris
Deputy Administrator

Enclosure

QUESTION NO. 1

In your testimony you mentioned a Department of Transportation Office of Inspector General 1985 report on your agency's Buy America program oversight and enforcement efforts. Please provide a copy of this report to the Subcommittee.

ANSWER

A copy of the report, dated April 12, 1985 is attached

4/28/88
HHO-32

U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Inspector General

Memorandum

For Official Use Only
Public Availability To Be
Determined Under 5 U.S.C. 552

Subject: INFORMATION: Report on Survey of Implementation of Revised Buy America Requirements by the Federal Highway Administration
Report No. AS-FH-5-023

Date: April 12, 1985

From: Harry R. Jansen
Director, Office of Surface
Transportation Programs, JA-10

Reply to Attn of: Sucher:X64103

To: Associate Administrator for Engineering
and Operations, HEO-1

Thru: Associate Administrator for Administration, HAD-1

I. INTRODUCTION AND SCOPE

The Office of Inspector General completed a survey of the Federal Highway Administration's (FHWA) implementation of Buy America provisions of the Surface Transportation Assistance Act (STAA) of 1982. The objective of the survey was to evaluate the adequacy of FHWA's implementation of the revised Buy America requirements for Federal-aid construction projects as prescribed by Section 165 of the STAA of 1982.

Primary emphasis was placed on FHWA's implementation of the revised statutory requirements in the STAA of 1982 and a subsequent legislative amendment to these provisions included in Section 10 of Public Law (PL) 98-229. Our review did not include an assessment of the states' compliance with FHWA's Buy America regulations or FHWA's administration of waivers of Buy America provisions. The survey generally covered the period since January 6, 1983, the date of enactment of the STAA of 1982, to the present. We reviewed applicable legislation, regulations, policies, procedures, and program files. We also reviewed the legislative regulatory history of the Buy America provisions. The survey was performed at FHWA Headquarters in the Office of Highway Operations.

II. RESULTS OF SURVEY

Our survey disclosed that FHWA adequately implemented the Buy America provisions of Section 165 of the STAA of 1982. We determined that the requirements and procedures contained in

Release to the Public of Contractor
Grantee Information Contained in this
Report May Be Prohibited by 18 U.S.C.
1905

FHWA's Buy America regulations were consistent with existing statutory provisions. FHWA Division Offices are required to monitor states' compliance with Buy America regulations in the same manner as they monitor any other federally required contract provision. Buy America provisions are included as standard provisions in Federal-aid construction contracts and are subject to the states' standard contract control procedures which verify contractors' compliance with the terms of these provisions.

III. BACKGROUND

Section 165 of the STAA of 1982 prohibited the Secretary of Transportation from obligating any funds for Federal-aid highway construction projects unless the steel, cement, and manufactured products used in such projects are produced in the United States. Buy America requirements apply to all federally funded highway projects unless the use of foreign products would result in at least a 25-percent reduction in the project's cost. States may request waivers to Buy America provisions if the use of domestic products is not in the public interest, or if there is an insufficient domestic supply source. In a final regulation effective December 27, 1983, FHWA determined it to be in the public interest to waive Buy America requirements for manufactured products other than steel and cement. Manufactured products were eliminated because of the difficulty in identifying the national origin of components used in highway construction. Section 10 of PL 98-229, enacted on March 9, 1984, amended Section 165 of the STAA by eliminating cement from the materials and products that are covered by the Buy America provisions. As a result, current FHWA Buy America regulations now only apply to steel products used on Federal-aid highway projects.

IV. ACTION REQUIRED

Since we are not making any recommendations, a response under Department of Transportation Order 8000.1B is not required.

#

QUESTION NO. 2

On April 25, 1986, the Associate Administrator for Engineering and Program Development sent a memorandum to the Regional Administrators warning them that a material certificate from a U.S. manufacturer was not sufficient to insure domestic origin because foreign steel bars or plates can be rolled into different shapes and receive a U.S. certificate. Is this still happening? What other documentation is used to verify origin?

ANSWER

We believe the April 25 advisory served its intended purpose. We are not aware that this problem has reoccurred. Subsequent to the issuance of the advisory memorandum, Bethlehem Steel Corporation, not a firm identified with the problem, voluntarily revised its material certificate to include a specifically worded statement to clearly indicate its steel was domestic and in full compliance with Buy America requirements.

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HHO-32

U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Washington, D.C. 20590

Subject: Buy America

Date APR 25 1986

From: Associate Administrator for
Engineering and Program Development

Reply to Attn of: HHO-32

To: Regional Federal Highway Administrators
Regions 1-10

It has recently been brought to my attention that a material certificate from a U.S. manufacturer does not guaranty that the origin of steel is domestic. It has been reported that foreign steel has been shipped into the United States in bars or plates then rerolled into different shapes, with a material certificate being reissued with the chemical analysis on a U.S. manufacturer's letterhead. This new material certificate was then assumed to represent U.S. manufactured steel material. To be considered domestic steel material all manufacturing processes to the steel material must occur in the United States.

Please make your States aware of the potential problem of accepting standard material certificates as proof of domestic origin of steel without further verification/documentation. If any of your States are having problems in this area, please notify HHO-32 at FTS 426-0355.

Rex C. Leathers

Rex C. Leathers

QUESTION NO. 3

Over the next decade, infrastructure programs that will meet the nation's highway and bridge needs are estimated to cost nearly $500 billion. Under these infrastructure programs, when Federal funds are made available to States, will FHWA continue to oversee the relevant Buy America provisions for the highway projects?

ANSWER

Unless FHWA's oversight role, as established today, is statutorily changed, we will continue to work with the States to assure Federal laws and regulations, including the Buy America provisions, are complied with on all Federal-aid highway construction projects.

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QUESTION NO. 4

In the November 25, 1983 Federal Register Final Rule, you stated that: "The States are expected to provide sufficient oversight to ensure compliance with the Buy America provisions. Penalties should be applied as may be appropriate in accordance with standard State and Federal-aid procedures." What are the States doing for oversight and what are their penalty options?

ANSWER

Buy America provisions are included as standard provisions in Federal-aid construction contracts. Thus a bidder who enters into a contract with a State agrees to comply with the Buy America provisions. The States'project inspectors ensure compliance with the Buy America provisions as well as the other contract requirements through their normal day-to-day contract administrative functions.

Major items of steel, including beams, sheet pile and other structural steel products, are normally marked with an identification code which State inspectors can trace to supplier furnished documentation to establish domestic origin. However, verification of domestic origin for incidental items is troublesome. Thus, for such items,States, for the most part, have adopted procedures which require contractor/supplier certification that the item is of domestic origin. When incidental items constitute a significant portion of a project's materials, such as reinforcing bars on a bridge or, paving project, State inspectors may, when warranted, perform indepth inspections to verify the origin of the steel.

Normally foreign steel is not brought to the job site because of the restrictions imposed by the contract's Buy America provisions. However, if there is an instance where foreign steel has been incorporated into a project it is treated as a contract violation. The penalty is that the contractor is required to remove and replace the item with domestic steel if practical. If not, the steel may be allowed to remain in place at no cost to the State or Federal government.

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QUESTION NO. 5

How many States have their own Buy America requirements, and of those how many are stricter than the Federal requirements? Do States ever try to impose State or local preference requirements?

ANSWER

All States have adopted provisions requiring "Buy America" in keeping with FHWA's requirements. However FHWA's Buy America regulations do permit States to impose more stringent requirements. Therefore, five States have imposed Buy America requirements which also cover cement. These States include Connecticut, Minnesota, New Jersey, South Carolina and South Dakota. In addition, the District of Columbia and Puerto Rico also have such requirements.

We know of no States that have a State or local preference requirements for material. However, several States have imposed State bidding preference where out of State contractors must bid 5 percent less than State contractors to be awarded contracts. State or local preference requirements are not permitted in Federal-aid contracts.

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QUESTION NO. 6

Does FHWA still have an "alternate bid" provision where a bidder can offer a foreign product that is more than 25 percent less than the lowest domestic bid? If so, how often is this used? How often are the other two exceptions, for public interest or unavailability, used?

ANSWER

The FHWA Buy America regulations do permit foreign steel to be used when the total bid based on furnishing foreign steel is 25 percent less than the lowest bid based on furnishing domestic steel. We are unaware of any instance where this provision was utilized to permit use of foreign steel.

The authority to grant waivers for a specific project or local geographic area has been delegated by regulation to our Regional Administrators. However, these waivers are usually discussed with the Washington Office prior to approval of the waivers. In the past two years, there have been less than a dozen waivers granted by the Regional Administrators. Attached is a sampling of the types of waivers granted. These usually involve a specialty type item that is unavailable domestically although one waiver was granted due to safety considerations.

Requests for waivers which involve nationwide public interest or availability issues are directed to the FHWA Administrator for action. In recent years only one national waiver has been considered. A notice was published in the Federal Register requesting information on the product (Reno Mattresses). Based on comments received, a national waiver was not considered justified. This denial was subsequently published in the Federal Register.

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REGIONAL BUY AMERICA WAIVERS

1.	Mar. 12, 1985	Waived requirements for low shear - high torque hydraulic motors due to no domestic manufacturing (Wisconsin).
2.	Jul. 8, 1985	Waiver for the use of foreign-made radial piston type low speed-high torque hydraulic motors for use in lift systems of two bridges over the Indiana Harbor Canal - BRM-N816(1) and BRF-ZZ6-1(3) (Illinois).
3.	Jul. 24, 1985	Waiver for the use of foreign-made radial piston type low speed-high torque hydraulic motors for use in the lift system of a bridge - M-4800 (Illinois).
4.	May 1, 1987	Waived requirements on a small quantity of bridge rail ($4,400) due to safety considerations of exposing traveling public to a lane closure for removal and replacement of bridge rails (Vermont).
5.	Oct. 20, 1987	Waived requirements for "high strength interference body bolts" due to lack of domestic supply (Michigan).
6.	Mar. 1, 1988	Waived requirements for bearings for bascule bridge, unable to find domestic supplier (Michigan).

QUESTION NO. 7

Have you ever suspended or debarred a FHWA recipient due to a Buy America violation? For any violation?

ANSWER

No FHWA recipient has ever been suspended or debarred for violation of Buy America provisions. Buy America violations to date have been determined to be violations of contract only and have been handled as such. The foreign steel is either removed, if possible, and replaced with domestic steel or left in the project work and not paid for. However, should a Buy America violation be found to be the result of a serious lack of business integrity or honesty, FHWA would certainly pursue a suspension and/or debarment action against the involved parties.

While FHWA does not suspend or debar State or local governments under the DOT debarment regulation (49 CFR 29), we can suspend or debar, for cause, private firms and individuals, including public employees. Attached is a listing of firms and individuals currently suspended or debarred.

04/28/88
HHO-32

FROM: ASSOCIATE ADMINISTRATOR FOR
ENGINEERING AND PROGRAM DEVELOPMENT

TO: REGIONAL FEDERAL HIGHWAY ADMINISTRATORS
REGIONS 1-10
DIVISION ADMINISTRATORS

THE FOLLOWING IS A LISTING OF COMPANIES AND INDIVIDUALS THAT HAVE BEEN SUSPENDED OR DEBARRED FROM PARTICIPATION IN ANY CAPACITY ON FEDERAL-AID PROJECTS. THIS LISTING IS BEING TRANSMITTED TO EACH OF THE REGIONAL AND DIVISION OFFICES VIA THE ELECTRONIC MAIL ONTYME II SYSTEM. ADVANCE NOTICE OF SUSPENSION. DEBARMENT, OR REINSTATEMENT ACTIONS WILL BE TRANSMITTED, ON A PERIODIC BASIS AS THEY OCCUR, TO REVISE THIS LISTING. AN UPDATE OF THIS LISTING WILL BE TRANSMITTED VIA ONTYME II TO EACH OF THE REGIONAL AND DIVISION OFFICES ON THE FIRST WORKING DAY OF EACH MONTH.

ANY QUESTIONS OR COMMENTS CONCERNING THIS LISTING SHOULD BE DIRECTED TO THE CONSTRUCTION AND MAINTENANCE DIVISION. HHO-30. 366-0355. OR THE OFFICE OF THE CHIEF COUNSEL. HCC-50. 366-0780.

/S/ RONALD E. HEINZ

FEDERAL HIGHWAY ADMINISTRATION--WASHINGTON. D.C.
OFFICE OF THE ASSOCIATE ADMINISTRATOR
FOR ENGINEERING AND PROGRAM DEVELOPMENT

SUMMARY OF SUSPENSION/DEBARMENT ACTIONS
APRIL 15, 1980

ORIGINAL SENT 4-1-80

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****   NOTE   ***   NOTE   ***   NOTE   ***   NOTE   ***   NOTE   ****
*                                                                    *
*  THIS SUMMARY IS NOT ITSELF A LEGAL ACTION OF FHWA.  IT MERELY     *
*  REPORTS ACTIONS TAKEN BY THE ADMINISTRATION BY NOTICE TO THE      *
*  NAMED RESPONDENTS.  FOR ADDITIONAL INFORMATION . PLEASE CONTACT   *
*  THE CONSTRUCTION AND MAINTENANCE DIVISION. HHO-30. 366-0355       *
*  OR THE OFFICE OF THE CHIEF COUNSEL. HCC-50. 366-0780.             *
*                                                                    *
****   NOTE   ***   NOTE   ***   NOTE   ***   NOTE   ***   NOTE   ****


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*                                                                    *
*                         CURRENT DEBARMENTS                         *
*                                                                    *
**********************************************************************
*                                                                    *
*  IN ACCORDANCE WITH 49 CFR PART 29, THE FHWA HAS DEBARRED THE      *
*  FOLLOWING COMPANIES AND INDIVIDUALS FROM PARTICIPATION IN ANY     *
*  CAPACITY IN DOT FINANCIAL ASSISTANCE PROGRAMS FOR THE TIME PERIOD *
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*******************************************************************

 COMPANY:                                    TYPE OF
 ADDRESS:                                    BUSINESS       FROM       TO

  ALLE-CATT ASPHALT, INC.                    HWY CONST      7-9-87     7-9-89
  P.O. BOX 69
  LOWER BRANCH RUN ROAD
  ALLEGANY, NY  14706

  DYRAM CRUSH STONE CORPORATION              MAT'L SUPPLY   7-10-86    7-9-89
  PEQUEST ROAD AND ROUTE 46
  P.O. BOX 332
  OXFORD, NJ  07863

  DOSCH-KING COMPANY, INC.                   HWY CONST      9-6-85     9-5-88
  16 TROY HILLS ROAD
  BOX [illegible]
  WHIPPANY, NJ 07981

  JERSEY [illegible] SEAL COMPANY            HWY CONST      1-12-87    1-11-90
  105 NORTH WHITEHORSE PIKE
  HAMMONTON, NJ [illegible]

  [illegible] CORPORATION                    MAT'L SUPPLY   7-10-86    7-9-89
  PEQUEST ROAD AND ROUTE 46
  P.O. [illegible]
  OXFORD, NJ [illegible]

  LIZZA [illegible]                          HWY CONST      12-4-85    12-3-88
  15 [illegible]
  ROSLYN, N[illegible]

  MAC [illegible]                            HWY CONST      6-12-86    6-11-88
  411 FRONT AVENUE
  HARRIMAN, TN [illegible]

  RJD, INC., [illegible] COMPANY             PAINT CONTR    5-1-87     4-30-90
  5[illegible] MAIN STREET
  STROUDSBURG, PA 18360



 INDIVIDUALS:                                TYPE OF
 ADDRESS:                                    BUSINESS       FROM       TO

  AGUILAR, [illegible]                       HWY CONST      4-11-86    4-10-88
  C/O HACIENDA LANDSCAPE CO.
  [illegible] LEMKE STREET
  LEMON GROVE, CA 92045

  ALBERTINI, LEONARD STEPHEN                 HWY CONST      11-9-85    11-9-88
  PRESIDENT
  ALBERTINI CONCRETE AND PAVING, INC.
  ROUTE 2, BOX 359
  JELLICO, TN [illegible]

  ANDERSON, JR., THURMAN                     HWY CONST      6-12-86    6-11-88
  C/O MAC MATERIALS, INC.
  411 FRONT AVENUE
  [illegible]
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6805 SHELLEY COURT INDIANAPOLIS, IN 46219			
COBB, LYNN MILLER C/O MAC MATERIALS, INC. 411 FRONT AVENUE HARRIMAN, TN 37748	HWY CONST	6-12-86	6-11-88
CONTINISIO, NICHOLAS PRESIDENT JERSEY SLURRY SEAL COMPANY HAMMONTON, NJ 08037	HWY CONST	1-12-87	1-11-90
CUMMINS, ROBERT 4 WESTWOOD DRIVE ENID, OK 73703	HWY CONST	10-14-86	6-3-88
DILLION, ROBERT J. RJD, INC., T/A J&J COMPANY 502 MAIN STREET STROUDSBURG, PA 18360	PAINT CONTR	5-1-87	4-30-90
HOCHREITER, HERBERT PRESIDENT, LIZZA INDUSTRIES 15 REMSEN AVENUE ROSLYN, NY 11576	HWY CONST	12-4-85	12-3-88
FERO, PETER W. PRESIDENT KRAMER OIL CORPORATION AND BYRAM CRUSH STONE CORPORATION REQUEST ROAD AND ROUTE 46 P.O. BOX [illegible] OXFORD, NJ [illegible]	MAT'L SUPPLY	7-10-86	7-9-89
KING, JAMES F. DOSCH-KING COMPANY, INC. 16 TROY HILLS ROAD BOX 266 WHIPPANY, NJ 07981	HWY CONST	9-6-85	9-5-88
REICHY, JR., JAMES J. 1405 3RD AVENUE SPRING LAKE, NJ 07762	ASPHALT DIST	2-5-87	2-5-89
SCHOENFELDER, [illegible] L. C/O WEAVER CONSTRUCTION CO., INC. BOX 550 IOWA FALLS, IA 50126	HWY CONST	8-15-85	8-14-88
SHABBIR, SYED 2503-A HAYNES MIDLAND, TX 79708	PA. SUPP. SERV. CONTR.	3-3-87	3-3-89
SHATTO, RONALD J. 304 MONMOUTH ROAD WEST LONG BRANCH, NJ 07764	ASPHALT DIST	2-5-87	2-5-89
SPITLER, RUSSELL E. 200 LAKEVIEW COURT WASHINGTON, PA 13501	HWY CONST	11-15-85	11-15-88
STANSBURY, WILLIAM H. [illegible]	ASPHALT DIST	2-5-87	2-5-89

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     *                                                                *
     *                       CURRENT SUSPENSIONS                      *
     *                                                                *
     ******************************************************************
     *                                                                *
     *  IN ACCORDANCE WITH 49 CFR PART 29, THE FHWA HAS SUSPENDED THE *
     *  FOLLOWING COMPANIES AND INDIVIDUALS FROM PARTICIPATION IN ANY *
     *  CAPACITY IN DOT FINANCIAL ASSISTANCE PROGRAMS PENDING THE     *
     *  COMPLETION OF AN INVESTIGATION OR ADMINISTRATIVE OR JUDICIAL  *
     *  PROCEEDING.                                                   *
     *                                                                *
     ******************************************************************

     COMPANY:                               TYPE OF         DATE OF
     ADDRESS:                               BUSINESS        SUSPENSION

   * BRANDON-TEA READY MIX                  MAT'L SUPPLY     4-6-88
     605 ASPEN
     BRANDON, SD  57005

   * CENTRAL CONCRETE, INC.                 MAT'L SUPPLY     4-6-88EG02260   P.O.
     1905 THIRD AVENUE
     MANKATO, MN  [illegible]

   * CRANE CREEK ASPHALT                    MAT'L SUPPLY     4-6-88
     P.O. BOX 571
     OWATONNA, MN  55060

     CREST ELECTRONICS COMPANY              TRAFFIC SIGNALS  10-16-87
     7306 HARFORD ROAD
     BALTIMORE, MD  [illegible]

     DURWOOD GREENE CONSTRUCTION CO.        HWY CONST        12-14-87
     P.O. BOX 1338
     STAFFORD, TX  77477

     ELCONTROL, INC.                        TRAFFIC SIGNALS  10-16-87
     6508 PIMLICO ROAD
     BALTIMORE, MD  21209

   * EMPIRE PAVING, INC.                    HWY CONST        4-6-88
     BOX 493
     405 WEST ST. JULIAN
     ST. PETER, MN  56082

     ETF, INC.                              TRAFFIC SIGNALS  10-16-87
     7300 YORK ROAD
     TOWSON, MD  21204

     G&S ASPHALT, INC.                      HWY CONST        12-14-87

     P.O. BOX 1338
     STAFFORD, TX  77477

     GER-SHEP, INC.                         HWY CONST        3-3-88
     342 RUTHRIDGE ROAD
     LANCASTER, PA  17604

   * [illegible]
```

```
* GUPTA ASSOCIATES, INC.                   BRIDGE CONST         4-12-88
  ROUTE 3, BOX 300C
  MILFORD, DE  19963

* HOFFMAN CONCRETE, INC.                   MAT'L SUPPLY         4-6-88
  P.O. BOX 3024
  1905 THIRD AVENUE
  MANKATO, MN  56002-3204

  JOMAR ASSOCIATS                          TRAFFIC SIGNALS      10-16-87
  8609 OLD HARFORD ROAD
  BALTIMORE, MD  21214
  8609 OLD HARFORD ROAD
  BALTIMORE, MD  21214

  K. L. F., INC.                           HWY CONST            3-3-88
  342 RUTHRIDGE ROAD
  LANCASTER, PA  17604

* KATHY S KRANES AND CONSTRUCTION          GEN CONST            4-6-88
     COMPANY, INC.
  AKA KATHY KRANES CORP.
  245 EAST 6TH STREET
  SUITE 249
  ST. PAUL, MN  55101

  KNICO-WOODWARD                           TRAFFIC SIGNALS      10-16-87
  6508 PIMLICO ROAD
  BALTIMORE, MD  21209

  L&I KRANTZ COMPANY, INC.                 HWY CONST            12-11-87
  1220 PORTERVILLE ROAD
  EAST AURORA, NY  14052

  LAUREL ASSOCIATES, INC.                  TRAFFIC SIGNALS      10-16-87
  6508 PIMLICO ROAD
  BALTIMORE, MD  21209

* LUNDIN CONSTRUCTION CO., INC.            GEN CONST            4-6-88
  P.O. BOX 3024
  1905 THIRD AVENUE
  MANKATO, MN  56002-3024

* LUNDIN [illegible], INC.                 MAT'L SUPPLY         4-6-88
  ROUTE #3
  OWATONNA, MN  56060

  MHM, INC.                                TRAFFIC SIGNALS      10-16-87
  2203 GREENSPRING DRIVE
  TIMONIUM, MD  21093

  MX4 ELECTRONICS, INC.                    TRAFFIC SIGNALS      10-16-87
  2203 GREENSPRING DRIVE
  TIMONIUM, MD.  21093

  MCMINN ASPHALT COMPANY, INC.             HWY CONST            3-3-88
  BOX 4688
  LANCASTER, PA  17604

  MCMINN ASPHALT PRODUCTS, INC.            HWY CONST            3-3-88
  1061 MANHEIM PIKE
```

7 SHOREHAM COURT BALTIMORE, MD 21236		
* RIVERBEND ASPHALT P.O. BOX 217 KASOTA, MN 56050	MAT'L SUPPLY	4-6-88
* SO. MINNESOTA ASPHALT SUPPLY CO., INC. P.O. BOX 217 KASOTA, MN 56050	MAT'L SUPPLY	4-6-88
SUPPLY DEPOT EAST, INC. 7300 YORK ROAD TOWSON, MD 21204	TRAFFIC SIGNALS	10-16-87
WESTERN MANAGEMENT ASSOCIATES. INC. 236 COLGATE AVENUE DUNDALK. MD 21222	TRAFFIC SIGNALS	10-16-87

COMPANY: ADDRESS:	TYPE OF BUSINESS	DATE OF SUSPENSION
* ANDERSON. [illegible] AKA COLIN TAYLOR 1790 [illegible] AVENUE ST. PAUL. MN [illegible]	GEN CONST	4-6-88
* ANDERSON. KATHRYN AKA KATH. A. ALFONSI PRESIDENT. KATHY'S CRANES AND CONSTRUCTION CO.. INC. P.O. BOX [illegible] HUDSON. WI 54016	GEN CONST	4-6-88
* LUNDIN. RICHARD C. PRESIDENT. LUNDIN CONSTRUCTION CO.. INC. 123 MARY LANE RR #5 MANKATO. MN [illegible]	GEN CONST	4-6-88
MARCUS. EDWARD 6508 PIMLICO ROAD BALTIMORE. MD 21209	TRAFFIC SIGNALS	10-16-87
MARIELLA. JOSEPH 7 SHOREHAM COURT BALTIMORE. MD 21236	TRAFFIC SIGNALS	10-16-87
* NORRE. LARRY RR #9. BOX 24 MANKATO. MN 56001	GEN CONST	4-6-88
SCHELL. THEODORE W. PRESIDENT. K. L. P.. INC. AND GER-SHEP. INC. 342 RUTHRIDGE ROAD LANCASTER. PA 17604	HWY CONST	3-3-88

```
8765 EAST RIVER ROAD
FRIDLEY, MN  55432


SWEIGERT, JEFFREY G.                  HWY CONST              3-3-88
PRESIDENT
MCMINN ASPHALT COMPANY, INC.
1820 RUTHRIDGE ROAD
LANCASTER, PA  17601

UHLE, FRED D.                         HWY CONST              11-28-86
(FORMER VICE PRESIDENT
 SACHS ELECTRIC COMPANY)
10 FOREST CLUB DRIVE
CHESTERFIELD, MO  63017




*********************************************************************
*                                                                   *
*                      REINSTATEMENT ACTION                         *
*                                                                   *
*********************************************************************
*                                                                   *
*  THE FHWA HAS REINSTATED THE FOLLOWING COMPANIES AND INDIVIDUALS  *
*  AS ELIGIBLE TO PARTICIPATE ON FEDERAL-AID PROJECTS.  THE LIST    *
*  INCLUDES ALL COMPANIES AND INDIVIDUALS THAT HAVE BEEN REINSTATED *
*  DURING THE CURRENT FISCAL YEAR.                                  *
*                                                                   *
*********************************************************************

ACTION TAKEN UNDER 49 CFR PART 29

COMPANY:                   SUSPENSION/DEBARMENT  PERIOD   REINSTATEMENT
ADDRESS:                                FROM       TO          DATE

COYOTE SUPPLY COMPANY                 5-1-86     11-30-67     11-30-87
3505 EAST FRONTAGE ROAD, NE
ALBUQUERQUE, NM  87107

LEYENDECKER HWY. CONTRACTORS,         3-26-86    3-25-88      3-25-88
   INC.
P.O. BOX 1757
LAREDO, TX  78044

MYSTIC BITUMINOUS PRODUCTS            10-15-86   10-14-87     10-14-87
 - COMPANY, INC.
P.O. BOX 68
EVERETT, MA  02149

PECKHAM MATERIALS CORPORATION   11-17-86   3-17-88      3-17-88
20 HAARLEM AVENUE
WHITE PLAINS, NY  10603

TRANS EASTERN INSPECTION, INC.  1-6-86     1-5-86       1-5-88
1726 NORTHWEST AVENIDA DEL SOL
BOCA RATON, FL  33432



INDIVIDUAL:                SUSPENSION/DEBARMENT  PERIOD   REINSTATEMENT
ADDRESS:                                FROM       TO          DATE
```

```
KING, GEORGE E.                   3-28-86       3-27-88       3-27-88
4005 WRENS WAY
KENNESAW, GA  30114

MATTINGLY, GOBEL                   3-26-86      3-25-88       3-25-88
743 SOMERSET COURT, NE
MARIETTA, GA  30067

MCGONAGLE, JOSEPH D.              10-15-86      10-14-87      10-14-87
PRESIDENT
MYSTIC BITUMINOUS PRODUCTS
  COMPANY, INC.
P.O. BOX 68
EVERETT, MA  02149

PAYNE, JIM                        10-14-86      12-3-87       12-3-87
11 QUAIL TRAIL
ENID, OKLAHOMA  73703

SHEPHERD, LYNN                    1-6-86        1-5-88        1-5-88
C/O TRANS EASTERN INSPECTION,
  INC.
1726 NORTHWEST AVENIDA DEL SOL
BOCA RATON, FL  33432



END OF LISTING OF REINSTATEMENT ACTIONS


     * INDICATES ACTIONS THAT HAVE BEEN ADDED
       TO THIS LISTING SINCE THE LAST UPDATE.


  * * * * * * * * END OF SUSPENSION/DEBARMENT LISTING * * * * * * *
25001 END OF DATA
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QUESTION NO. 8

Is there a uniform contract for requiring domestic steel materials and products, or different State contracts?

ANSWER

Neither the Buy America statute or implementing FHWA regulation established a standardized contract clause. Rather each State highway agency is required to develop suitable contract language to assure compliance. State developed Buy America provisions are reviewed and approved by FHWA field offices prior to use.

04/28/88
HHO-32

QUESTION NO. 9

In a December 15, 1987 memo to Regional Administrators on the new governmentwide nonprocurement debarment procedures, you say that the suspension or debarment "only extends to affiliates if they are specifically named and separately served with notice." Is this a change in policy? Can a debarment or suspension action be targeted at one company and exclude the parent company or other affiliates?

ANSWER

The previous suspension and debarment regulations provided that where an affiliate was suspended or debarred, the affiliate be afforded the rights pertaining to notice and hearing provided in the regulations. The new regulations, as discussed in our December 15 memorandum, clarify and reiterate this requirement and specifically state that the affiliate must be named and separately served with notice. Thus, this is not considered a change in policy.

Our notices to respondents, state that suspension and debarment extends to any company they are or may become affiliated with during the effective term. Although this statement has no immediate administrative effect, it is included to advise respondents that action may be taken against any affiliate that may be used to avoid the effect of suspension or debarment by shifting resources or operations from the excluded company.

FHWA suspension and debarment actions are usually taken as a result of investigations, indictments, convictions or other judicial proceedings for applicable causes. If a judgment is rendered against a division or affiliate of a company, and not the parent company or other affiliates, suspension and debarment may parallel that judgment. On the other hand, a suspension and debarment may extend to affiliates not covered by the judgment. The scope of a suspension or debarment depends on the organizational structures and the circumstances of each specific case.

04/28/88
HHO-32

Mr. **Oberstar**. Thank you very much for logging you time with us, and Godspeed on your next appointment.

Mr. **Farris**. Thank you, sir.

[Mr. Farris' prepared statement follows:]

STATEMENT OF ROBERT E. FARRIS
DEPUTY FEDERAL HIGHWAY ADMINISTRATOR

FEDERAL HIGHWAY ADMINISTRATION
U. S. DEPARTMENT OF TRANSPORTATION

HEARING BEFORE THE SUBCOMMITTEE ON INVESTIGATIONS
AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U. S. HOUSE OF REPRESENTATIVES

FHWA IMPLEMENTATION AND ENFORCEMENT OF THE BUY AMERICA REQUIREMENTS

MARCH 31, 1988

It is a pleasure to be here today to assist the Committee in its oversight implementation of the Buy America provisions of the STAA of 1982.

The Federal Highway Administration (FHWA) published an interim final rule on Buy America on January 17, 1983 implementing section 165 of the STAA of 1982 (enacted January 6, 1983). Briefly, the preamble to that rule explained that FHWA had never covered "all manufactured products" under its Buy America regulations and Congress had not specifically directed a change in that policy in the STAA. Therefore, the rule stated "that it was in the public interest and not inconsistent with the legislative intent" to waive the application of coverage of Buy America to manufactured products other than cement and steel. Cement was subsequently eliminated by P.L. 98-229, enacted March 9, 1984. The preamble further stated that "By denoting 'steel' in Section 165 (1982 STAA), Congress called attention to their intent to make the coverage more encompassing . . . the FHWA, therefore, has expanded the Buy America rule to include all steel products."

FHWA's requirements for administering and enforcing the Buy America program appear in 23 CFR Part 635, Subpart D. Basically, States are required to have standard contract provisions that require the use of domestic steel materials and steel products for permanent incorporation in projects. Standard State and Federal-aid contract procedures are used to assure compliance with the requirements.

Our sister agency, UMTA, has implemented somewhat different Buy America regulations with respect to manufactured products. The exception for manufactured products, other than steel products, promulgated by FHWA reflects the marked differences between the programs of FHWA and UMTA, especially the significant differences in the degree to which they fund the purchase of manufactured products. Congress recognized these differences in the enabling Buy America statute by establishing specific requirements dealing with the manufactured products associated with bus and rolling stock procurement. The Department in turn allowed FHWA and UMTA to promulgate separate regulations consistent with the law but reflecting the differences in their programs.

Most of the money spent by UMTA is for manufactured products; therefore, the Buy America requirements have a substantial impact on its programs. On the other hand, FHWA programs spend little money on manufactured products as the bulk of its appropriations go for construction. Because of this, the amount of foreign manufactured products used in FHWA projects is minimal. The FHWA, therefore, concluded that it was not necessary to impose Buy America requirements on such products.

Manufactured products other than steel is the only category which FHWA has exempted from the Buy America requirement. As stated earlier, this exemption was accomplished through rulemaking and was based on the rationale that FHWA had never covered manufactured products under its previous Buy America regulations and Congress did not specifically direct a change in the policy in enacting section 165. FHWA found that it was in the public interest to waive the application of Buy America to manufactured products.

The Committee has asked what impact the Buy America program has had on the U. S. economy. We can only speak from the highway standpoint; it is our opinion that the Buy America restrictions have had an insignificant impact on imports of foreign steel. Steel used in highway construction represents only 1 percent of all steel used in the U. S.

The Committee also asked about any enforcement actions that FHWA had carried out and whether current sanctions were adequate. Normal Federal-aid highway overview of the Buy America provision is handled at the FHWA Division Office level as a contract administration requirement of the individual project contracts.

The Division Administrator has the delegated authority to enforce all contract provisions. Violations of Buy America are considered to be violations of the contract and are resolved through our normal State-Federal contract administration procedures. The Division Administrator would only contact the Regional or Washington Office in an instance where guidance was needed in unusual circumstances. We are not aware of any significant enforcement problems in this area at this time.

Normally foreign steel is not brought to the job site because of the restrictions imposed by the standard Buy America provisions of highway contracts. However, if there is an instance where foreign steel is inadvertently incorporated into a project, it is treated as a contract violation. The foreign steel would either be removed and replaced, if possible, or left in the project work and not paid for. We believe this process for handling violations is adequate.

The committee asked how individual State Buy America laws affect FHWA's administration of the program. I would note that our regulations (23 CFR 635.410(b)(2)) provide that if State law is more stringent it will govern. We are unaware of any adverse effects. Basically, most States have adopted the same regulation as the Federal regulations although a few States have retained coverage of cement.

FHWA believes that regional offices are providing consistent interpretation of the Buy America regulations. Our regional offices usually discuss with headquarters all unusual questions and any waiver requests prior to regional action. We believe that the FHWA regulations adequately carry out the intent of the law and are easily understood and uniformly administered in all States. Standard State and Federal-aid contract procedures are used to assure project compliance with Buy America requirements as well as other contract requirements. In addition, the provision is self enforcing to a certain extent in that U. S. industry monitors the Federal-aid program.

This completes my statement and I will be pleased to answer any questions that you have.

Mr. **Oberstar**. I'd like to ask our previous panel back for just a few moments to follow up on a few matters.

The point I wanted to raise—and I was hoping that we'd be able to get to it before Mr. Farris testified—is the $500,000 threshold and the segmenting of contracts.

You heard my question to Mr. Farris and his response. I'd like your reaction to the economic consequences of allowing that $500,000 threshold to apply. What would be the job loss, the steel loss, and secondly, what concerns do you have about the segmenting of highway and bridge contracts in such a way that it might vitiate the effect and purpose of the Buy America language?

Whoever wants to take a first whack at it—Mr. Kovack?

MR. HOPPE, MR. KOVCAK, MR. FLUCKER—Resumed

Mr. **Kovack**. Well, just one of the fears that we had about that elimination had to do not only with the $500,000 floor, but also the fear that whether a contract was at or below $500,000 or even above, the contract might be broken up so that it would come below the floor, no matter what the amount.

That would give an added insult to the removal as it might occur. That was always there, Mr. Chairman, since way back in 1978 when the floor was put in just to help get the bill passed. I can recall in 1978 and again in 1982 that this committee supported 100 percent without a floor. There was a lot of give in what occurred. But the concern that we raise to the question that you asked is as I stated. You could take bigger contracts and break them up to make them fall below the floor.

Mr. **Oberstar**. Yes. I believe the testimony indicated $500,000 threshold makes half of the projects excused, because it's only four percent of the steel. This doesn't make any difference. The flow is there.

Mr. **Flucker**. Well, on the smaller projects, what happens is that we're talking about things with a lot of culvert steel, or maybe some guardrail steel and maybe a very small bridge. These people are probably buying from some sort of a distributor. It really helps us if this thing can be total. Then, what happens is that the distributor is only going to carry domestic material.

If he knows that there is no outlet for imported material, and there's no way to get this thing in there, he's going to make his whole yard domestic. He's going to buy domestic culvert stock for making this stuff up. He's going to buy domestic rebar.

I would also say that maybe that $500,000 at a four percent steel level—that sounds rather low. I don't know that I would totally agree with that. We could do some research on it. I know that's what he said.

But once you get the thing going—let's get it going in the right direction. Then as far as the argument that it would be an administrative problem—it's not an administrative problem for all those other small contracts, because you know the yards have nothing but domestic material in them. This paper trail, as I say, which does have to be filed on every job—it's a very simple thing to administer. We don't think it would add any burden to the total administration of the program.

Mr. OBERSTAR. Mr. Hoppe, do you have anything?

Mr. HOPPE. No comment.

Mr. OBERSTAR. My concern in raising this is specifically that the opponents of Buy America, both institutionally within the Executive Branch, and those in the private sector who continually oppose Buy America—if they can't defeat the language that's now in the law, they'll find ways to undermine it and subvert it with seemingly innocent amendments offered on appropriations bills or in other forms. While this is only such-and-such, this is only this amount, it's only going to affect these very, very small contracts, well, suddenly you find that little pinhole of an entry becomes a sluicegate of evasion of the basic Act.

I think it's important for us to be sensitive to such matters.

Mr. Flucker, in your testimony you refer to a fabricated tunnel liner case, where you had to convince the State and the contractor that foreign material should not be allowed. Did you take recourse to the Federal Highway Administration, the district engineer, or to higher levels? What participation did you have on that effort on the part of the Federal Highway Administration?

Mr. FLUCKER. What I recall reciting here was basically what Mr. Epling, who seems to have disappeared on me, told me about this particular job. In this job, through our fabricator groups, we hear when a large contract is going out. You get dollar estimates on a particular job that he's going to bid.

Through the grapevine, we learned that this contractor was planning to submit a price based upon foreign fabricated tunnel liner. Mr. Epling tells me that he went to the contractor and said, "You can't do that. That's Buy America. It comes under the Surface Transportation Act." And the contractor didn't really listen very hard, and kept pursuing, as we understood it, a foreign source.

He then went to the State. And the State, which was a Commonwealth, actually, their administrator said, "Oh, well. Gee whiz." Sort of like, we can't do anything about it until it's bid, until the guy makes the mistake. You can give the fellow a copy of the law and say there it is, but you can't say don't do this, don't do this.

What we were afraid of was that an error was going to be made, and it was going to be an error of such consequence that it might be very difficult to come back from that error and seek recourse.

Finally, I think, by persistence, he made these people realize that we were watching and vigilant. They say the price of liberty is eternal vigilance—okay. We were eternally vigilant on this, and we were going to go after this thing. They finally realized that somebody's watching and they backed off.

But it happened basically at the State level. It did take a lot of pushing from what Mr. Epling told me.

Mr. OBERSTAR. Well, thank you. I think that's very important, and the message—there are many messages that have come through in the course of this testimony. But one of the most important is vigilance, the word you just used.

If you in the industry, the steelworkers whose jobs are at stake, and we in the Congress who advocate and authored this legislation, are sufficiently vigilant, we'll keep the program moving. As soon as there is a perception on the part of those who oppose the legislation, or who are not in sympathy with it, that we're not in favor of this, or we don't think it's very important, they're going to evade it, subvert it, and soon it will be meaningless words on paper.

The final question is this. The Federal Highway Administration testimony said that Buy America provision are "self-enforcing to a certain extent in that U.S. industry monitors the Federal aid program." Is that sufficient?

Mr. **Flucker**. Well, let me say that I think it is sort of sufficient. Our office in this business of fighting concrete problems, which is what we really are doing—I represent the steel people in the sense that if you're going to design a bridge, I want to make sure that the best darn steel design is out there. When we go head-to-head in competition against the concrete bridge, we have the best design out there and we hope to win in this competitive thing.

To do that, we maintain a record or computer file on all of the bridge projects which are in design. As a bridge project is announced by a State highway department, we put that into a computer database. Our man is calling on the Department of Transportation of that State. He may be calling on the consulting engineer who's designing the bridge, if it's not going to be designed by the State bridge engineer. He will also call on the Federal Highway Administration to get better interpretation on specifications, or correct interpretation on specifications. We're tracking every project that comes along.

Then as a service to our members, U.S. Steel and Bethlehem, and to the fabricators, we publish the lists of projects that are in design and a list of projects that are presently bidding.

We know what's happening in the industry on a weekly—literally a daily basis, practically. We know what's out and what's bidding. And my regional engineers will identify to us projects which are not covered in Buy America or which may have a problem.

Now, there aren't many problems. As I say, we picked up the Harris County thing as a non-Buy America thing, but there was nothing we could do about that, because it was State funds and Texas does not have a Buy America provision which covers it.

We do know what is going on, and we are vigilant, not only in the sense of the domestic versus foreign, but particularly in the concrete vs. steel thing.

Mr. **Oberstar**. Well, that's fascinating. It's a very instructive insight into the industry and its efforts and monitoring of the Federal program. It's important for you to be Horatio at the bridge or Cerberus at the gate. But wouldn't you feel better if the Federal Highway Administration were being equally vigilant? I don't have any reason to say that they aren't being vigilant. But I mean, with the same enthusiasm. [Laughter.]

Mr. **Flucker**. I have a paycheck enthusiasm.

I think that they are very good. We are not complaining about the administration of this. They have put out the kinds of rules and regulations I think they need. Once the law was written, once the implementation of the administration was reviewed, we got what we wanted there. I would say that basically they have done this thing within their capability and the way they should do it from their side.

Mr. **Oberstar**. Thank you.

Mr. Kovack?

Mr. Kovack. Yes. I would just question that one area that I raised in my testimony on page 10 of the full statement. This is relating to the Congressional Record of December 21 in 1982, and I quote it here: "For the purposes of implementing this section of the Act, the Buy America provision applies to the purchase of and/or leasing of all equipment." Now, it's one thing to order the steel and all the construction material. What's happening on this portion of Buy America that relates to the equipment that's used in the construction of the highways and the bridges?

There seems to be a vacuum there on reporting. There may be something that I'm not aware of. And, by God, I know that happens a lot of times. But here's an area that I'm not aware of any reporting on in terms of where is that equipment manufactured and is it meeting Buy America criteria in the States? What are the States doing to implement that section and to make sure that the contracts that are bid in those States then are using equipment—or the contractors that are getting the contracts in those States are using equipment—that is domestic?

A lot of that equipment is made of steel, and that's a secondary source of steel imports, as is for example automobiles generally.

It seems to me there's a vacuum here on that part.

Mr. Oberstar. We will ask the Federal Highway Administration to respond and further provide additional information for the record on the point you've just raised.

Yes? Mr. Flucker.

Mr. Flucker. I must profess a certain ignorance on that. But I can tell you somebody else you could ask to come in here and testify to that, and that would be the ARTBA Materials and Services subcommittee group. They are the people who represent the contractors who are buying the equipment that is used in construction. I don't know the answers, but I know where to ask the questions.

Mr. Oberstar. That would be a good place for us to go.

Mr. Clinger, any further questions?

[The prepared statements of Mr. Hoppe, Mr. Flucker, and Mr. Kovack follow:]

TESTIMONY OF

WILLIAM L. HOPPE
GENERAL MANAGER, INDUSTRY AFFAIRS
BETHLEHEM STEEL CORPORATION

ON BEHALF OF

AMERICAN IRON AND STEEL INSTITUTE

TO

THE SUB COMMITTEE ON INVESTIGATION AND OVERSIGHT OF THE
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

March 29, 1988

Thank you, Mr. Chairman, my name is William L. Hoppe. I am pleased to have the opportunity to discuss with you the very important matter of the Highway Program and its Buy American Provision. I am here today as Chairman of the American Iron and Steel Institute's Committee on International Trade. I also am General Manager, Industry Affairs, Bethlehem Steel Corporation. My comments today are on behalf of the domestic member companies of the American Iron and Steel Institute.

AISI has been a strong supporter of the inclusion of Buy American provisions in federal highway bills since the 1970s. We have been pleased with the strong support of this provision that the Congress -- including particularly some members of this Subcommittee -- has shown in the highway bills that have been passed containing Buy American. Our support for Buy American -- and we believe the support of the Congress -- has been based largely on the simple but compelling proposition that, if the U.S. government is going to fund highway construction through taxes on its citizens, the benefits of that construction -- in terms of jobs created -- should also accrue to U.S. citizens.

I am here today to confirm the wisdom of the legislation passed by you, and state for the record that it has been a success. We believe that the highway bills -- which as you know include bridge construction -- and the Buy American provisions contained in them have lived up to all of the expectations that you and we had for them.

The record of accomplishments of the highway bills is impressive. When the interstate highway system is completed in the 1990s, the highway programs will have built the 42,500 mile National System of Interstate and

Defense Highways and either maintained, or built and maintained, the 850,000 miles of Federal-aid highway system. And most importantly, this achievement will have been accomplished on a pay-as-you-go basis through the use of a modest federal gasoline tax without adding to the national debt.

From this investment, the Federal Government, through the states, has built a highway transportation infrastructure system second to none in the world. And this system, by increasing the productivity of the U.S. economy, plays a large role in maintaining the high standard of living that we enjoy.

Obviously, the highway system not only adds to the productivity of the economy and helps create jobs, but through its construction has had an enormous impact on employment, production, and investment in many sectors of the U.S. economy. In the steel industry, we have estimated that approximately 6,000 direct jobs and two million tons of steel products per year are attributable to highway and bridge construction under the highway program. While this may seem like a small amount for an industry that shipped 76 million tons of steel products in 1987, let me assure you that these tons are vitally important to us -- and especially to those companies that produce structurals, plates, reinforcing bar, wire and piling. These products are used intensively in highway and bridge construction, and the companies that produce them have made investments over the years in response to demand for these products from the highway program. With the steel industry struggling to modernize and upgrade its facilities, every ton produced for this market is important to our cash flow.

As Mr. Flucker will discuss in his statement, without the current Buy American language, many of the jobs created as a result of demand for highway program products would be in serious jeopardy -- along with the taxes that are paid and other jobs in the communities which are dependent on the steel industry.

Let me now address the policy and economic issues related to Buy American and the steel industry. First, many opponents of Buy American have over the years attempted to eliminate that provision from highway bills because they believed Buy American preferences would tend to decrease competition and increase the cost of procurement under the Program. In response to this allegation, we assert that there is intense competition among domestic producers of products used in highway and bridge construction. In addition, with regard to the cost issue, we would cite the Congressional Research Service, which has twice determined that there is returned to Federal, state and local governments over 40¢ per dollar in taxes when domestic products are procured by the Federal Government. It would therefore seem that, on a strictly economic basis, if procurement of foreign materials were to be justified, such procurement would have to offset the negative tax impact of materials not being produced in the U.S. -- which is greater than the Buy American preference contained in the highway bill! Second, some critics have asserted that our international obligations under the GATT Government Procurement Code are somehow compromised as a result of the continuation of Buy American in the highway bills. As you know, the Government Procurement Code does not cover Department of Transportation procurement under the highway program: the U.S. is therefore free to apply domestic preferences to such procurement without violating our obligations under the Code.

Permit me a short digression here on the GATT Government Procurement Code. Its implementation has been a disaster for the U.S. Reports by the

International Trade Commission have revealed that the expected benefits to American companies, as a result of that Code, have not materialized -- although the procurement opportunities expected to be offered to foreign companies by the U.S. certainly have! To be specific, during the international negotiations on the Code, U.S. companies were told by our negotiators that they would have access to $20 billion in new foreign government procurement, and that they would be treated -- under the Code's provisions -- in the same manner as domestic companies bidding on code-covered procurement contracts in the foreign country. The reality -- as reported in the ITC report -- is that U.S. companies have only gained access to an additional $4 billion in foreign procurement -- and not all of this is directly attributable to benefits obtained under the Code. But that's not all! For a couple of years or so our international negotiators have been pushing to expand the Code's coverage to federal procurement that is presently uncovered. Specifically, U.S. negotiators have proposed that services -- which include construction -- and transportation be added to coverage under the Code. Given the disastrous results of the Code as originally negotiated, we shudder to think what would happen if Buy American were eliminated for federally funded construction projects, especially highway and bridge construction. We appeal to the Congress to help us in opposing any consideration of expansion of the Code -- especially in the all-important highway and bridge construction area -- at least until the U.S. has gotten fair value from the foreign governments for the Buy American coverage it has already given up.

In closing, I would like to raise the issue of highway and bridge infrastructure projects in the future, and future legislation. As a key part of the American economy, our concern regarding America's infrastructure is not limited to obtaining a strong Buy American provision for future highway or infrastructure programs --though clearly we support and will work for such a provision. But we also have a large stake in their condition and the ability of the U.S. highway and bridge system to enable us to "deliver the goods". Without an effective highway and bridge system, the competitiveness of America's entire manufacturing sector would be badly compromised. And so when the National Council on Public Works Improvement published its study in February, 1988, outlining the current and future infrastructure needs of our economy, we paid close attention. That report found -- and I quote from page 1 -- "convincing evidence that the quality of America's infrastructure is barely adequate to fulfill current requirements, and insufficient to meet the demands of future economic growth and development." In October, 1985, the American Transportation Advisory Council estimated that the capital needs of the highway system for the period 1987-1996 were $494 billion -- a sum far greater than is expected to be spent under the current highway bill during this period. Clearly, the American highway and bridge system requires a substantial additional investment commitment in order to be able to meet the needs of the U.S. economy in the future. We in the U.S. steel industry -- having invested in production facilities and product development to meet the needs of the highway and bridge programs to date -- stand ready to support the next generation of highway and bridge programs so essential to our nation's economic future.

Testimony of

Ronald L. Flucker

Vice President/General Manager
AISC Marketing, Inc.

On behalf of

American Iron and Steel Institute

Before the

Subcommittee on Investigations and Oversight

of the

House Committee on Public Works and Transportation

March 29, 1988

Good morning Mr. Chairman. My name is Ronald L. Flucker. I am the Vice President and General Manager of AISC (American Institute of Steel Construction) Marketing, Inc. This is a technical market development association supported by the Bethlehem Steel Corporation, the U. S. Steel division of the USX Corporation and the American Institute of Steel Construction, an association of structural steel fabricators, who supply structural steel to the bridge and building markets. From 1964 until 1986, I was employed by the United States Steel Corporation as Manager Structural and Plate Products and Manager Construction Marketing. I am a graduate and registered structural engineer. My career has been in the areas of developing markets for structural and plate steels in the bridges and building industry.

First, I would like to put the subject matter of steel, bridges, and the position of steel in the bridge market into perspective. Domestic consumption of steel for all uses is approximately 90 million tons per year of which about 20 percent is from foreign sources. I estimate that approximately 500,000 tons of steel is fabricated annually for the superstructure of new or rehabilitated bridges, that is girders, trusses, arches, etc. This is the market that I know intimately. I would also estimate that almost another two million tons of steel is used for other applications such as reinforcing for pavement and bridge decks, piling for foundations, culverts and other drainage products, and miscellaneous materials such as sign structures and fencing. This means that almost 3% of all the steel used, and nearly 4% of all domestically produced steel is consumed by the highway and bridge construction industry directly. Although I do not have a data source, and I doubt that anyone does, I feel confident in saying that at least 90% of this steel is covered by the Buy America provisions of the Surface Transportation Assistance Act of 1982, or other local Buy America legislation.

Now speaking broadly to the three specific questions that you have posed about the Act and its enforcement, my answer is brief. To the best of my knowledge and experience the Buy America provisions of the Surface Transportation Act of 1982 have been enforced consistently and accurately to the satisfaction of the steel mill and fabricator companies that I represent. Further, I believe, that its administration has been a minimal burden on the states and agencies which have had to enforce them. The reason for this is, the documentation required to prove that steel products meet the material requirements set forth in the specification documents describing them are generated by the domestic mills which produce the products. This documentation generates a paper trail of mill test certification reports which accompany steel as it leaves the mill, stays with it at the fabricator's shop, and is eventually filed with the state or agency building the project. These mill test reports are then evidence of compliance not only with the material specifications but with the Buy America provisions.

We have encountered some contractors who have persisted in the pursuit of foreign origin steel fabricated products. One example was fabricated tunnel liners. Because this was an unusual product the contractor may have thought it was excluded from the provisions. In this case our information grapevine alerted us to the problem. Steel industry representatives followed the problem closely and after a lot of effort convinced the state and the contractor that foreign material would not be allowed here, but it did take our concerted effort to head off a potentially bad situation. But I would repeat that except for the exceptions, I have heard of no consistent problem areas. There may also be some improvements in the administration of the provisions in the areas of standardization of documents and interpretations which could be suggested after a careful review by FHWA and steel industry representatives. But this would be the limit of our criticisms. Certainly AISI (the American Iron and Steel Institute) and AISC will and have helped in this endeavor. AISI has already produced a booklet which pictures the roll marks used on domestically produced steel shapes to help those responsible for the enforcement of Buy America provisions and customs inspectors identify domestically produced steel shapes.

I would now like to address the economic impact of the Buy America requirements. Since I am most knowledgeable about the bridge structure component of the industry I will address my remarks to that 500,000 ton market and leave the other two million ton market to others. Again trying to put things into perspective, I would estimate that 90% or more of this market is covered by the Buy America provisions. Further, the bridge market is a competitive one, not only between competing sources of mill steel and fabricators, but particularly between the competitive building materials, steel and concrete. I estimate that this market is shared 50/50, by steel and concrete, with concrete dominating the short span (120' and under) bridge market throughout the country, and most of the market on the west coast, and steel dominating the longer span and more complicated (curved and continuous bridge) market and most of the market in the Northeast. This intense competitive market situation has brought not only price competition to the marketplace, but technologically innovated competition.

Let me give you my estimates about what market means to the steel industry in the way of jobs. A ton of steel fabricated into bridge components, sitting in a fabricator's yard ready for shipment to the jobsite where it will be erected probably has 25 man hours of direct and indirect labor, that is, the mills' labor, the fabricators' shop labor, detailing, transportation, utilities, paint manufacturers, welding rod manufacturers, bolt manufacturers labor etc. and all of the management and office work associated with these activities. A ton of mill steel arriving at a fabricator's plant is worth $600 or more. The fabricator adds over $600 more of value so a typical bridge component again sitting in the fabricator's yard is worth about $1250. For a 500,000 ton per year industry, we therefore have about 12,500,000 manhours or 6,250 man years of work, and $625,000,000 of value. I am not an economist so I cannot estimate the multiplier effect of this, but I am sure that these 6,250 jobs support a lot of other jobs and pay a lot of taxes.

Now I would like to address the problems of supply. The principal mill product from which bridges are fabricated is steel plate, probably by a factor of 90%. There are seven mill complexes that I know of that can supply steel plate of the quality necessary for bridges. From time to time there may be stretch outs in mill deliveries, but I cannot imagine a shortage which would limit the capability of the industry. I also believe that the steel mills recognize the unique problems which the fabricators have in their markets, and are making every effort to assure a smooth flow of material to them. The mills recognize that consistent availability of steel plate product for the projects under construction is necessary to build confidence in the state and agency managements who are deciding whether or not to build next year's bridges in steel or concrete. There are also forty or more fabricators actively soliciting bridge fabricating at anyone time with adequate plant facility. In summary, I cannot visualize a period of shortage or one without competition. I would like to say here that congressional action, or inaction which temporarily interrupts the funding of highway and bridge industry is of major concern. It causes major discontinuities and disruptions that delay projects and increases their cost. It can cause business losses and plant inefficiencies, all in the name of politics.

Since market development through technological innovation is "my bag" as they say let me explain to you that the domestic mills and fabricators, have over the last 25 or 30, years spent millions of dollars supporting research into material and design innovations for bridges. As I have said this is in recognition of the competitive struggle between steel and concrete for this market. The net effect is that we build a bridge with sixty percent of the steel that it took 20 years ago, less labor is required, and the designs, materials and details will yield a longer life. The steel industry's research is one that continues to bring better bridges to the American road system.

I would now like to tell you what I think would happen to the domestic bridge fabrication market if the Buy America provisions were lifted. Foreign fabricators supported by their mills would target about 40% of this market, the larger projects, and those where the overall project has been subdivided into parts, i.e. approaches, foundations, and superstructure. In these cases, the superstructure steel is a large part of the contract, so a small saving on steel would register heavily with the general contractors bidding the job. Their pricing strategy would be not to offer the full saving of their very low labor costs, but to sell at a price just low enough to force the general contractor to turn away from domestic suppliers. That price might be as little as $100 per ton, certainly no more than $200. What I am now saying is that for a savings of $150 per ton on 200,000 tons of steel, or $30,000,000 in a 15 billion dollar program, we would lose over 2,000 jobs directly and more indirectly, and add $220,000,000 to our trade deficit, by sending that amount of our tax dollars overseas. This wouldn't make sense to me. It is too bad that all government construction funding, including that contemplated for the infrastructure program doesn't contain Buy America provisions.

In addition the sale of fabricated steel there would be an effort by foreign mills to sell steel directly to domestic fabricators. However this would not be half as profitable for them as selling the fabricated steel, because raw steel has a very low labor content.

There would also be some other problems that I can only touch on. One is quality. While many countries have the capability of producing excellent quality, how would we rule out those without the experience and quality controls necessary to guarantee the buyer is getting what he ordered? This could be a major administrative problem. Also who pays for the increased cost of inspection. Inspection by the states or agencies at the fabricator's plant is usually painstaking and thorough. Who will pay the cost of sending our representatives overseas to high living cost areas for long periods of time?

Summarizing I feel that the American taxpayer is getting his money's worth under the Buy America provisions of the 1982 Surface Transportation Assistance Act.

Statement of

Kenneth S. Kovack, Assistant Director
Legislative Department
UNITED STEELWORKERS OF AMERICA

before the

House Public Works & Transportation
Subcommittee on Investigations & Oversight

on the

Buy American Provision

of the

Surface Transportation Assistant Act of 1982

March 31, 1988
Washington, D.C.

Introduction

Mr. Chairman and members of the Committee. The USWA has previously indicated its support of our Buy American laws as a determinant of procurement policy, in general, and of the Buy American provisions in the Surface Transportation Act of 1987, in particular. Although Buy American laws have some duration, they are nevertheless changing in detail and subject to constant debate. Buy National is a policy which has sometime been ignored, often times criticized, but nonetheless necessary. It is in many ways a mirror image of similar policies among trading nations. It is also a policy which this Congress and past Congresses have chosen to support and to successfully expand in specific legislation such as the Surface Transportation Act against opposition.

We were very pleased with the success in the first session of the 100th Congress regarding the veto override of the Surface Transportation Act, a veto initiated in part because of the inclusion of a Buy American provision in the law.

Buy National Policy

From testimony in a previous hearing, the USWA testified as follows:

> "Buy national practices are not unique. America does not stand alone in the implementation of a buy national program. Other nations have laws, regulations or policies which limit the amount of government procurement which is available to foreign bidders."

In 1933, the Congress stated that we needed a buy national policy. Though circumstances in the past 55 years have changed, the need for a continuing buy national policy has not. We have, on many occasions, stated that "the expenditure of public funds carries with it the social obligation of being sensitive to unemployment." State funds should be treated likewise and, in fact, many states have passed mini-Buy American laws as they relate to state procurement contracts. We would note that often times the co-mingling of federal and state funds requires Buy American for procurement contracts.

A continuing and an effective Buy National policy, we believe, will help to provide the assurances that domestic manufacturers need to determine their course for future investment. This is especially necessary considering that some foreign nations are continuing to expand their domestic steelmaking capacity in spite of the fact that:

- excess production capacity worldwide continues to exist;
- substitutes for steel are growing;
- certain consumer products such as cars are being downsized.

Also, there is the possibility of the phasing out of the Voluntary Restraint Agreement in 1989 to be followed by an increase in steel imports. A Buy National policy is a necessary part of the world trade equation.

Trade Policy Liberalization

Another concern for supporting our Buy American policy, according to a CRS report in 1984, is that the Congress "over the past 50 years has actively cooperated with the Executive Branch in dismantling U.S. and foreign trade restrictions in world trade. This has taken place in the face of occasional high unemployment, a sometimes overvalued dollar, and, since 1971, the first U.S. (trade) deficits in merchandise trade in this century." Nevertheless, a trade deficit situation has continued since this CRS report was issued, the impact of which on the steel industry has been significant.

Buy America--Highway Bill

The first Buy American provisions in the Highway Act of 1978 (PL 95-599) were pursued by our union to assure that the domestic steel industry and other domestic manufacturers would participate in supplying the material needs of the highway and mass transit programs. USWA supported the amendment because foreign manufacturers became increasingly the suppliers of steel and related steel products for our highway and mass transit systems. We continued to work for improvements which did occur in the 1982 and 1987 legislation as follows:

- o increased the Buy American bid preference requirement from 10% to 25%;
- o removed the $500,000 exemption below which the Buy American procurement requirement will not apply;
- o phased-in the domestic content requirement in rolling stock, including subcomponents, from 50% to 55% effective October 1, 1988 and to 60% effective October 1, 1991.

As the highway system nears completion, we must expand our horizons beyond the massive maintenance requirements for restructuring, rebuilding, repairing, and resurfacing of our present system to the building of a future transportation system and the rebuilding of our aging infrastructure.

Jobs

Statements made by the Department of Commerce indicate that for every billion dollars of trade deficit, America loses 25,000 jobs. This results in the loss of billions of dollars of tax revenue and additional payments of treasury revenue for welfare assistance including in some cases, job training and worker education programs. As all of us are aware, last year we experienced another record balance of merchandise trade deficit of $171.7 billion. The manufacturing trade surplus of $5 billion in 1981 was followed by annual deficits which reached $153.7 billion in 1987. In this decade, we have become a debtor nation for the first time since 1914. Our trade policy has resulted in a substantial loss of the better paying jobs in the manufacturing sector. Job losses in auto, textile, shoes and steel, to mention a few, are common knowledge. In steeltowns, paycheck lines for many have given way to unemployment lines. Feeder and user businesses have closed and the need for supply and user transporting businesses has decreased. Main Street, in large part in some areas, has joined the jobless in the degrading experience of the soup lines and food pantrys of the early 1930's. Welfare, once unthinkable, became common as a matter of survival.

Steelworkers and the iron ore miners have been among the most severely impacted. During this decade, basic steel production and maintenance employment has dropped from an average of 332,100 workers in 1980 to 165,800 workers in

December of 1987--a reduction of 50%. In addition, through February 1988 of the Trade Adjustment Assistance program, steelworkers filed the largest number of petitions for relief and were certified in 550 cases representing 193,924 workers. This is not an enviable report or record.

Without the Buy American provision in the law, the job loss would have been worse. A 1981 Federal Highway Administration report states that for every $1 million of highway construction, steel product needs are as follows:

- 78 tons of structural steel
- 98 tons of reinforcing steel
- 9 tons of culvert pipe
- 8 tons of pilings and joints
- 3 tons of cast iron pipe
- 2,280 linear feet of fencing
- 1,837 feet of guard rail
- 265 feet of bridge railing

Steel accounts for 10% of highway construction costs. Since passage of the 1982 Act, it is estimated that nearly 3 million tons of steel annually is used for federally-funded highway and mass transit projects. According to the steel industry, it means about 6,000 basic steel jobs.

Jobs and Highway and Mass Transit Capital Investments

Our nation's highway and mass transit public works investments have contributed substantially to our national well being. Following the implementation of the 5¢ federal gasoline tax increase in April 1983, we requested information from the House Public Works Committee as to the employment impact of this legislation. Based on information received from the Department of Transportation,

> "It is estimated that the proposal to increase highway user charges and highway and transit spending by the equivalent of a 5¢ per gallon motor fuel tax increase will generate about 170,000 jobs. In addition, the number of jobs 'induced' by this proposal may approach 150,000 per year."

Be mindful that this increase in jobs relates only to the 5¢ increase in available revenue--not to the 8¢ gas tax in the original law.

Further, Mr. Chairman, the information included a breakdown of direct jobs per billion dollars of expenditure (based on 1980 dollars) as follows:

	On-site	Off-site	Total
Highway	12,850	19,493	32,342
Transit	10,240	14,812	25,052
			57,394

On-site employment refers to employees working at the project site. Off-site refers to employees working in the basic industries producing and transporting raw, processed, semi-finished and finished products, construction equipment and material. "The total number of jobs attributable to the 5¢ increase would approximate 320,000 jobs or 64,000 jobs per 1¢ of increase." More jobs are saved in the nation because of the Buy American requirements in the law. In addition, it is worth pointing out that the Surface Transportation Act and its Buy American provisions have provided a source of general revenue recycled into our treasury from manufacturing, transportation and construction jobs paid for by users fees, gasoline, car, truck and parts taxes accumulated in the Highway Trust Fund. These jobs and the permanent jobs to maintain, service and run certain systems help reduce our levels of unemployment and our budget deficits.

Areas of Concern

Because the unions, unlike the industry, are not in the business of submitting bids for government procurement contracts, we are unable to address some of the questions that arise relating to the Buy American program. However, on many occasions we have jointly informed the Congress of problem areas. These concerns were not only with regard to the Buy American provisions in the highway bill, but to its application to other departments or agencies of government as well.

For example, the DOT wished to restore by regulation a provision which was deleted in the 1982 highway bill; namely, that for a contract under $500,000, the Buy American provision would not apply. The cooperative response of this committee and the House and Senate Steel Caucus, at the request of our labor/management plea for intervention, was swift and effective. The DOT proposal to change substantively the law by regulation was withdrawn. The change by regulation, if allowed by the Congress, according to then-current DOT data, would have affected 60% of the contracts otherwise covered by the Buy American requirements and 10% of the dollar value of the contracts under the highway act were less than $450,000. Following the 5¢ gas tax increase to the trust fund, even more dollars and steelworkers' jobs would be at risk if the threshold had been reinstituted. It was, on the part of DOT, a clear indication of its disapproval of Congressional action on that Buy American section of the Act. Further, that clear indication was reinforced when the DOT proposed to drop the entire Buy American section in the 1987 Act.

This disaffection with the Buy American provision expressed by the government gives us cause to wonder how seriously the DOT implements the law. How often, we can ask, and under what circumstances, does the Secretary use his discretion to waive the Buy American requirements when he determines that their application would be inconsistent with the national interest? We are not aware of any report to the Congress in which the agency details the number or reasons for, and the sums involved in the waiver action(s) by the Secretary.

Additionally, the legislative history clearly states: "For the purposes of implementing this section of the act, the buy American provision applies to the purchase of and/or leasing of all equipment."

Is the Secretary enforcing Congressional intent, or is waiver by the Secretary a more common course of action? The Congress, indeed all of us, would like to know. States, too, are impacted by this intent of the Congress. What precautions do the State Highway Administrations take to insure compliance?

Fragile Foundations:

A Report on America's Public Works

The National Council on Public Works Improvement submitted a report, "Fragile Foundations," to the President and the Congress. One will find few if any surprises as to the condition of and the need to replace and repair the nation's infrastructure if we are to support future economic growth. In the preface, the report states that the Council has found much that is good; "But on balance, the Council concludes that our infrastructure is inadequate to sustain a stable and growing economy." The Council calls on the nation: "to renew our commitment to the future and make significant investments of our own to add to those of past generations."

Mr. Chairman, we contend that such a renewal will provide more jobs and a return of treasury funds to the government if a Buy American provision is a part of future infrastructure legislation. The scope of this prospect, dependent on funding, is so massive that many of our trading partners will, nevertheless, share in the rebuilding and renewal process. Highway, mass transit, aviation, water resources, water supply, waste water treatment, solid waste and hazardous waste is a banquet at which many can feed. However, the cook should not be fed the crumbs. USWA support of a Buy American provision rests upon the full employment goals expressed by the Humphrey/Hawkins Full Employment Act. Previous USWA testimony indicated:

> "It is hard for companies and their workers, who pay into the tax system, to understand why tax

> expenditures should not be spent domestically, especially in times of high unemployment. Fiscal stimulation is a legitimate and recognized means of government intervention in the economy to create economic growth and government purchasing is one means of that stimulation."

According to the Congressional Budget Office, spending on our nation's total infrastructure as a percentage of our GSP has declined from 3.1% in 1968 to 2.4% in 1986. We cannot afford to continue this trend. And, as the Congress and the nation prepare to address this need, we are prepared to work with and for the resolution of the problem with the hope that the Congress will continue the Buy American policy in the highway bill and look favorably upon a Buy American provision in future infrastructure legislation.

Thank you.

American Federation of Labor and Congress of Industrial Organizations

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June 8, 1988

Honorable James L. Oberstar
Chairman, Subcommittee on Investigations
 and Oversight
Committee on Public Works and Transportation
House of Representatives
Room B376, Rayburn Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to convey the views of the AFL-CIO on the Buy American provisions of the Surface Transportation Assistance Act. The AFL-CIO has long supported the inclusion of Buy American provisions in all government procurement laws and regulations. Your leadership, and the work of your committee, has been crucial to the maintenance and enforcement of this vital aspect of government policy.

The need for strong Buy American laws is clear. The U.S. economy is suffering mightily under the massive trade deficits incurred over the last eight years. Buy American provisions are one of the few effective protections available to domestic firms and workers faced with an ever growing volume of injurious and unfair imports.

The maintenance of employment and a healthy business climate is an accepted and necessary concern of government. Taxes paid by Americans should be invested in their skills and communities to enhance their economic security. Purchases of domestically produced goods constitute an investment in American workers and our national industrial capacity, both of which contribute to our nation's well-being. These benefits are lost when foreign goods are purchased by government agencies.

The Buy American provisions of the Surface Transportation Assistance Act are illustrative of the positive effect these requirements have on the domestic economy. The AFL-CIO is concerned, however, over the repeated efforts of opponents of these provisions to eliminate them entirely or severely limit their scope. Waiving the application of coverage of Buy American to manufactured products and the elimination of cement as a covered item undercuts the intended effect of this provision. The AFL-CIO strongly urges that consideration be given to including once again these goods under the terms of the Act. Given the unacceptably high trade deficits currently facing the United States, emphasis should be placed on expanding, not weakening, vital Buy American statutes.

Sincerely,

Robert M. McGlotten

Robert M. McGlotten, Director
Legislative Department

c: Members of the Subcommittee on
Investigations and Oversight

Mr. **Oberstar**. Thank you very much for remaining to respond to these questions. We have a few others that we'll submit in writing. We would like your response. I want to say to all the witnesses, you've been very forthright, very candid, and most helpful in our hearings. I also want to take this opportunity to compliment—rare for this subcommittee—the Federal Highway Administration on their administration of the Buy America Act. If other Government agencies were as vigilant in carrying out their responsibilities, we would have fewer problems in the protection and advancement of American jobs and American industries in competition in the great world marketplace.

With that, the subcommittee stands adjourned.

[Whereupon, at 2:12 p.m., the subcommittee was adjourned.]

BUY AMERICA

(Urban Mass Transportation Administration)

THURSDAY, MAY 12, 1988

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to recess, at 10:10 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. Oberstar. The Subcommittee on Investigations and Oversight will come to order.

Today's session is the second in a series of inquiries into enforcement of the Buy America Act by various executive branch agencies: the Federal Highway Administration, the Urban Mass Transportation Administration, and, next, the U.S. Army Corps of Engineers.

Last month we learned that the Federal Highway Administration has done an admirable job of ensuring that domestic steel is used in the construction and maintenance of our national highway system. Federal funding for the highway and bridge programs has accounted for the purchase of an estimated 2.5 million tons of American steel annually. It has supported some 6,000 jobs in basic steel and has generally stimulated the economy about 2.36 times as much as the direct expenditure on that steel.

The subcommittee feels very good that American dollars, authorized by the full Committee on Public Works and Transportation, have saved American jobs and that the law is working as Congress wrote it and intended it.

The mass transit picture is not so encouraging. We are greatly concerned that the domestic industries supplying products to the mass transit market have not fared as well under UMTA's stewardship of the Buy America program as the steel industry has under FHWA's administration of the highway program.

We are not convinced in this case that the intent of the conferees in writing the authorization language, and those in the appropriations process who approve funding for UMTA grants issued for the first time under the 1982 Surface Transportation Systems Act, is in fact being carried out.

In the words of the conference report, "It is the intent of conferees that Federal funding for public projects such as rail transit, road and bridge construction, and the myriad of other transportation-related projects covered by Federal funds assist the American worker and domestic contractors and suppliers to the maximum extent feasible within the bounds of statutory requirements. The conferees direct UMTA to be especially sensitive to the letter and spirit of statutory 'Buy America' requirements when making new-start rail transit grants."

We will hear today from witnesses involved in bidding on a project in Seattle who believe that the American worker was not assisted to the "maximum extent feasible" when Seattle Metro, using Federal dollars approved by UMTA, chose a foreign granite supplier based on an aesthetic preference for the color of the product.

When UMTA was asked about this, they said it's none of their concern. We question whether this is what Congress had in mind when it directed UMTA to be "sensitive to the letter and spirit of Buy America." Those words were not idly thrown into the law or into the Conference Report or into appropriations bills. They were carefully thought out beforehand, vigorously debated, and each word carefully weighed before it was put into law—not policy, but law.

We will also hear today from General Accounting Office specialists who have studied UMTA's methods of monitoring grantee compliance with Federal regulations and who have examined a specific case involving a Sacramento regional transit agency and the Siemens Corporation, a supplier of rail vehicles from West Germany.

In its report GAO found that even when UMTA discovered a blatant violation of Buy America in the first delivery of light rail vehicles, UMTA did nothing more than require the remaining cars to be brought into compliance; no penalties, no deterrence, no action on the wrongfully produced first increment of rail vehicles.

In this case, which then-Acting Administrator Ralph Stanley described as "pretty clear-cut" and "the worst violation of Buy America," the guilty company was only required to bring those cars yet to be manufactured into compliance with Buy America. There was nothing done about the previously built, delivered—and improperly so—vehicles that are out of compliance with the Buy America program.

This subcommittee is greatly concerned that UMTA's lax enforcement of Buy America has in fact given a green light to manufacturers abroad who violate Buy America. These manufacturers—who early on in the process took the Buy America program seriously because in their countries their buy-national programs are tough and vigorously enforced and they expected the same of America—came to realize we do not enforce our laws the way their countries do their own domestic protective measures.

They eventually realized that even if caught, the worst that can happen to them is a slap on the wrist. The tragedy in this type of attitude, if that is indeed the case, is that foreign suppliers, with the benefit of heavy subsidies from their domestic Governments, are gradually draining away the resources and the effectiveness of the American industrial base while they dump subsidized products and, in effect, their unemployment on the U.S. domestic open market.

What our foreign counterparts have figured out—and what we are still learning the hard way—is that procurement policies, driven strictly by shortsighted greed, ignore the much broader economic implications of purchasing domestic goods.

An analysis prepared by the Congressional Research Service estimates that every dollar spent on mass transit in the U.S. generates $1.83 in direct and indirect domestic production. And that is a conservative estimate because it applies only to the expansion of existing facilities. It doesn't take into account new construction or heavy repair. A $1 billion expenditure generates an estimated 52,000 jobs in transit-related industries. Shortsighted policies that look only to today's economy do not account for the avoided welfare costs, disposable income, Federal tax, and social security benefits paid that accrue in the domestic economy when our dollars are spent here and not abroad.

At a time when our trade deficit has reached unprecedented levels, it is more critical than ever that the Buy America program provisions are strictly enforced.

In this subcommittee's role of oversight, we are going to do our part to ensure that American workers are helped to the maximum extent envisioned and intended by the letter and the spirit of the law.

The Chair recognizes the gentleman from Pennsylvania. Mr. Clinger?

Mr. CLINGER. Thank you very much, Mr. Chairman.

As you mentioned, this is the second in the series of three oversight hearings that we are holding on the application to Buy America programs under the jurisdiction of the Public Works and Transportation Committee. We previously reviewed the application of the Buy America provisions to Federal highway projects administered by the Federal Highway Administration, and today we will be examining Buy America as administered by UMTA.

It has been nearly a decade since Buy America requirements were first applied to federally funded mass transit projects. In the interval since that time the American transit market has experienced a large influx of foreign corporations, many of whom possess a distinct advantage over domestic corporations because of cheap labor costs and an economic perspective that along with Governmental subsidies allow several years of losses to accrue in order to gain a foothold in the U.S. market, illustrating the classic targeting effort to penetrate a market.

This unfair advantage was the major motive behind the enactment of Buy America in the first place and why the continuing viability of Buy America is of prime importance, as the chairman has indicated.

In the first hearing, we heard how beneficial the Buy America has been to the domestic steel and steel products industries. We also heard that while occasional glitches have occurred, the program has run fairly smoothly. I believe we will hear a far different story today as we examine the application of Buy America to Federal mass transit projects.

We realize that while the rules guiding the application of Buy America to federally funded highway and mass transit projects are contained in the same legislation, the two programs and the implementation of the Buy America rules are quite different. Those administering highway projects need only be concerned with assuring that steel used in such projects is of domestic origin. On the other hand, those administering mass transit projects must assure that both steel and manufactured products are of domestic origin and that the components of rolling stock meet the required percentage of domestic content.

We also fully understand that UMTA is much more limited in both staffing and resources than FHWA. Nonetheless, it appears that UMTA has either failed or perhaps has chosen not to understand the legislative intent behind the enactment of Buy America and has not been as diligent as they could have been in carrying out the requirements of this legislation.

We will be hearing this morning about the legislative requirements of Buy America, how those requirements have been carried out by UMTA, how compliance is monitored, and whether existing sanctions are appropriate and useful. To aid in our review, we will hear about particular problems encountered on two recent transit projects. While we don't wish to impart particular motives to those involved, I assure you that we will be quite thorough in our questioning about the situations illustrating weaknesses in both the program and in its administration.

As we attempt to come to grips with the various intricacies of the Buy America program and how that program might best be improved in the future, the question will be how we can balance the aims and requirements of Buy America with the need to provide program flexibility in order to allow grantees to best meet their individual project requirements—a delicate balancing act.

I trust that what we hear will help us gain a better understanding of the program and how it might be better utilized in the future.

Mr. Chairman, I join you in welcoming our witnesses, and I look forward to hearing their testimony.

Mr. OBERSTAR. Thank you very much, Mr. Clinger. We greatly appreciate your comments.

The Chair would again like to express appreciation to the gentleman from Pennsylvania for his splendid participation and cooperation in designing and carrying out these hearings.

Does the gentleman from Tennessee have opening comments?

Mr. CLEMENT. Yes. Thank you, Mr. Chairman.

I am happy to join in this hearing on the aspects and problems involved with the administration of Buy America provisions of the Urban Mass Transportation Administration, UMTA.

As a strong supporter of the Buy America concept, I am somewhat disturbed at what seems to be a lack of will on behalf of UMTA to enforce the Buy America provisions applicable to mass transit programs. Although the Administration and opponents of the Buy America concept contend that giving preference for domestic items on Federally funded projects is a protectionist requirement, I strongly disagree. After all, this is taxpayer money, and it only seems proper that at least some of the money should benefit the American economy.

The multiplier effect of Federal funding for public transit is quite significant. I feel that UMTA needs to be encouraged to have a stronger oversight role in this process. Clearly, there needs to be a stronger incentive provided to ensure that the Buy America provisions of the law are enforced as Congress intended.

Thank you, Mr. Chairman.

Mr. **OBERSTAR**. Thank you. I appreciate the gentleman's remarks.

The gentleman from Minnesota, though not a member of the subcommittee, we welcome his participation, particularly in his role as the ranking member on the Water Resources Subcommittee.

Mr. Stangeland?

Mr. **STANGELAND**. Thank you, Mr. Chairman.

First, let me express my appreciation to you and to the Ranking Republican, Mr. Clinger, for scheduling this meeting, and also thank you for allowing me to sit in in attendance and participate.

Today this subcommittee will examine UMTA's interpretation and adherence to the Buy America requirements that apply to grants from that agency. By way of example, the subcommittee will consider the bid process utilized by one UMTA grantee, Seattle Metro, for construction of the Seattle bus tunnel project, where particular focus will be on the purchase of granite for use in the bus stations, granite which might have been supplied by a domestic manufacturer of the highest quality and reputation, and a constituent of mine and a constituent of yours, Cold Spring Granite of Cold Spring, Minnesota.

Regrettably, Cold Spring Granite was ruled not to be a responsive bidder in this particular instance because of a combination of circumstances that conspired to deny them that opportunity. Those circumstances included inconsistent UMTA interpretation of the laws and requirements in one case and a general UMTA attitude which seems not very inclined to support, much less enforce, Buy America.

In that atmosphere, Seattle Metro conducted a granite procurement which, while perhaps legal and proper, has every appearance of having been deliberately constructed to in fact give preference to an American company's foreign competitors.

Right off the top, I think we can make some telling observations about UMTA's mind set. For example, in his April 5, 1988, letter to me responding to my inquiry about the granite purchase for the Seattle bus tunnel project, UMTA Administrator DelliBovi wrote, and I quote, "Under the Buy America requirements a grantee can specify a foreign product since the Buy America requirements set forth a domestic preference standard rather than an absolute requirement that items of U.S. origin be procured."

Apparently, the Administrator is reading a different statute than the one which I and this subcommittee is familiar with. It comes as news to me and, I am sure, to all the members of this committee that the language which the Congress enacted in 1982 and amended in 1987 expresses merely a wish, hope, or vague notion that it would be just fine if domestic products were preferred over foreign-manufactured ones.

The words of the statute are clear, and I quote again, "Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds unless steel and manufactured products used in such projects are produced in the United States." UMTA's interpretation of that language as expressing a only preference simply runs counter to reason and counter to the plain language of the law.

Under another curious interpretation, UMTA has ruled that the 25 percent cost-differential waiver of Buy America might be available to a grantee on the basis of separable procurements carried out as a part of the overall project rather than on the basis of the overall project cost, as is clearly set out in the statute. It is pertinent to note that to save costs, Seattle Metro pulled the granite procurement out of the general construction bid and, the evidence seems to show, knew very well in so doing a 25 percent cost-differential waiver might be available to justify a foreign granite purchase.

Mr. Chairman, I don't want to belabor the point any longer. But I want to make it clear that, in my opinion, asking UMTA to protect American jobs and manufacturing productivity is like asking the fox to guard the henhouse. Is it any wonder that the agency was able to find no wrong in Seattle?

The subcommittee has an opportunity to learn today firsthand of the experience in attempting to deal with UMTA and an UMTA grantee in the fulfillment of the law's Buy America requirements. I want to thank Mr. Maile and Mr. Rinn for their appearance to present their story, and thank you again Mr. Chairman, for the opportunity for this matter to be examined on the record.

At this point I would ask unanimous consent that my letter of March 24, 1988, to the Honorable James Burnley, Secretary of Transportation, and the April 5, 1988, reply to me from Mr. Alfred A. DelliBovi, Administrator of UMTA, be made a part of the record and inserted at some appropriate place.

Mr. OBERSTAR. Without objection, the documents the gentleman referred to will be included in the hearing record in conjunction with the testimony from Cold Springs Granite. (See page 204.)

Mr. STANGELAND. Thank you very much, Mr. Chairman.

Mr. OBERSTAR. The gentlewoman from New York?

Ms. SLAUGHTER. Thank you, Mr. Chairman.

I congratulate you for holding these hearings on the Buy America provisions of the Surface Transportation Act.

The fact is, Buy America legislation is good for our economy. It maintains and creates American jobs and stimulates growth. According to a recent CRS study, every Federal dollar spent on mass transit results in a total economic output of $1.80 for each of the next three years. The study reports that over 250 sectors of our economy are benefitted by the mass transit expenditures made through the highway bill.

Other estimates indicate that each $1 million spent over one year in the rail car industry yields 42.6 full-time jobs. An article in the New York Times last month reports that the Port Authority of New York and New Jersey spent $7.7 billion rebuilding subway commuter cars, creating 15,000 jobs and $12 billion in wages and business sales.

Even closer to home for me is the General Railway Signal Company, which employs about 2,000 people and has its main office and plant in Rochester, New York. I am pleased to see that Dick Griffin, Director of Government Relations for General Signal, GRS's parent company, is here testifying today on behalf of GRS.

Since the incorporation in 1904, GRS has been a recognized leader in the innovation, the design, and the manufacture of transportation control systems and the equipment for railroads and rail transit systems throughout America. GRS has had a hand in building many of the great rapid transit systems in our cities. Right here in Washington, GRS was a prime contractor in the installation of the system on the Metro which permits maximum speeds during rush hours, maintains safe stopping distances between trains, and dispatches trains automatically.

General Railway Signal helps to improve transportation for millions of Americans throughout the Nation.

I look forward to hearing the witnesses this morning on their views and recommendations of how we can improve our Buy America laws because of the proven beneficial effect buy American laws have had on our economy.

I thank you again, Mr. Chairman, for holding these hearings.

Mr. OBERSTAR. We greatly appreciate your statement and the reference to the job impact of mass transit programs. Our first witness this morning is Mr. Vic Rezendes, Associate Director of the Resources, Community and Economic Development Division of GAO.

Mr. Rezendes, will you have associates with you? If so, please identify them for the record.

TESTIMONY OF VIC REZENDES, ASSOCIATE DIRECTOR OF RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY B. ANN KLEINDIENST, GROUP DIRECTOR AND JOHN T. McGRAIL, OFFICE OF GENERAL COUNSEL

Mr. REZENDES. Thank you, Mr. Chairman.

To my left is B. Ann Kleindienst, group director of our railroad work; and to my right, John McGrail, a GAO attorney.

[Witnesses sworn.]

Mr. OBERSTAR. Thank you. We greatly appreciate your participation over a long period of time, developing the database and analysis of the Buy America program as administered by the Urban Mass Transportation Administration, and we look forward to your testimony.

We have your complete document, which will be included in the record, and you may deliver it in full or you may summarize if you prefer.

Mr. REZENDES. I prefer to just summarize it for you here.

Mr. OBERSTAR. Thank you.

Mr. REZENDES. We appreciate the opportunity to testify before you today on our previous work concerning UMTA's monitoring and enforcement of the Buy America provision of the Surface Transportation Assistance Act. Our testimony today makes three points based on our past reviews:

First, the Buy America requirement is complex and subject to misinterpretation;

Second, UMTA's approaches to grantee oversight are not structured to monitor for compliance with the Buy America requirement;

Third, UMTA does not have precise guidance for choosing appropriate enforcement options in cases of noncompliance with these requirements.

In our past work, we found that the Buy America requirement is complex and subject to misinterpretation by UMTA, grantees, and third-party contractors. The Congress amended the act in 1987 to clarify these requirements. Although UMTA has not yet published regulations implementing this change it is difficult to draft a regulation that will provide an all-purpose definition of the complex concepts of Buy America. Thus, further clarification usually involves compliance monitoring and case-by-case decisions by UMTA's office of chief counsel.

In 1985 we recommended that UMTA disseminate its legal rulings on the regulations to all grantees and UMTA's regional offices. Presently, legal rulings are not routinely disseminated to the grantees, but they are to the regional offices.

We continue to believe that wider dissemination of these decisions would over time provide a broader, more comprehensive understanding of the Buy America requirement. Effective monitoring can help avert compliance problems if it is conducted before contracts are awarded. Our 1985 reviews found that UMTA's compliance monitoring mechanisms are not structured to focus on compliance with UMTA's regulations and concluded that UMTA needed better assurance that grantees comply.

Since then, three other potential Buy America compliance approaches have been made available to UMTA: triennial reviews, project management oversight, and preaward and postdelivery audits of rolling stock procurements.

However, only the preaward audit offers the opportunity for timely and comprehensive compliance monitoring. We understand that UMTA is preparing draft regulations that will place the responsibility for the preaward audits with the grantees. Since UMTA alone has the authority to make final interpretations of the Buy America requirement, its involvement in the preaward audit could assist the interpretation and compliance monitoring before a contract is awarded.

In 1985 we recommended that UMTA establish guidance for choosing appropriate enforcement actions when noncompliance was identified. In response to our recommendation, UMTA stated that its triennial review notice contains guidelines for enforcement options available when noncompliance is identified.

However, UMTA's triennial review guidance on the use of enforcement options is very general. We are concerned that UMTA's general guidance may not be very helpful to the regional staff in choosing appropriate enforcement options.

In summary, the Buy America requirement is complex, subject to misinterpretation, and not easily clarified by an all-purpose definition in regulations. The dissemination of UMTA's decisions to grantees, in addition to the issuance of new regulations that implement the 1987 legislative changes, would provide a better understanding of the Buy America requirement. UMTA's involvement in the preaward audit would further assist the interpretation and compliance monitoring of the Buy America requirements.

Finally, more precise UMTA guidance for the use of enforcement options when noncompliance is identified would promote consistency among regions and accelerate the resolution of noncompliance cases. Accordingly, we recommend that the Secretary of Transportation direct the UMTA administrator to routinely disseminate UMTA's legal rulings on Buy America to all grantees, provide for UMTA's direct involvement in the preaward audit of rolling stock procurement, and establish more precise guidelines for use of enforcement options when noncompliance with Buy America requirements is identified.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions at this time.

Mr. **Oberstar**. Thank you very much, Mr. Rezendes. We greatly appreciate your testimony and the analysis that GAO has done.

In doing so, the Chair would like to point out that there are two GAO analyses of UMTA's administration of the Buy America Act. They are very extensive documents. One goes back to February 1985, and the other, September 1987. So, this is not a new subject for GAO.

Mr. **Rezendes**. That's right.

Mr. **Oberstar**. And these are not new warnings sounded.

Mr. **Rezendes**. That's correct.

Mr. **Oberstar**. This is not new caution or counsel that is offered by GAO. It is a matter of continuing inquiry by GAO, and apparently of continuing neglect by UMTA.

Your last point will be the first that I'll address, that is, pointing out the need for dissemination of information to grantees. Why is there so much misinterpretation of regulations by UMTA, by grantees, by contractors? Is it, as you suggest, that the grantees don't have the information on hand to make a judgment and to effectively carry out this act? And how can we achieve more consistent adherence to the law and the regulations? Should there be, in addition to sending information out, workshops and training sessions? What else should there be?

Mr. **Rezendes**. The Buy America provisions as they relate to rolling stock are a little different from most of the other provisions. They tend to be more complex.

Mr. **Oberstar**. Could you pull the microphone up closer, please?

Mr. **Rezendes**. We get into very legal definitional problems of what is a manufactured product, what is assembled, what is a component, what is a subcomponent. As you know, in the rolling stock provision, the exception is that 50 percent of rolling stock components must be manufactured in the United States and assembled in the U.S. The difficulties we ran across in looking at the Sacramento case is that there were different interpretations between the bidder, the grantee, and UMTA as to what components were whether components were subcomponents of components, and whether the chassis that were being manufactured were assembled or merely manufactured in the United States. It became very complex.

We would like to see UMTA take a more active role rather than an enforcement role in these cases. That is why we are recommending that UMTA become an active participant in the preaward audit before a contact is signed to procure rolling stock, that

UMTA or its regional offices or its project management oversight contractors be involved in providing a clearer definition to the grantee as to whether in fact that procurement meets Federal requirements.

Mr. **Oberstar**. Now, that is a very important juncture, a very important, critical time in the whole process of awarding grants and contracts.

Mr. **Rezendes**. That's right.

Mr. **Oberstar**. I want to dwell on that in a moment.

I want to get at another factor. Could, you describe for me the attitude of the UMTA personnel toward the Buy America provisions? Do they regard this as a very high priority, enforcing and carrying out the Buy America Act, or do they regard it as more of a nuisance, something that stands in the way of effective administration of the transit program? Do they see themselves as vigorous administrators of this act?

Mr. **Rezendes**. I don't have an overall comment as to what their attitude is, but I can tell you how they are structured to implement it, which doesn't seem to be very aggressive. They have one person basically in headquarters who is the sole person who is responsible for making these interpretations. The regional staff are not trained to making these determinations on a case-by-case basis.

The project management oversight contractors, of which there are ten throughout the country, from what I understand from UMTA personnel, there is only about one contractor who has any level of understanding to make definitive determinations.

So, overall, basically we have a very small group, one person and one or two contractors, who have any expertise to make these determinations.

Mr. **Oberstar**. Where is that one staff person located?

Mr. **Rezendes**. Here at headquarters.

Mr. **Oberstar**. The headquarters office?

Mr. **Rezendes**. Yes.

Mr. **Oberstar**. Does UMTA have regional offices?

Mr. **Rezendes**. Yes, it does, throughout the country.

Mr. **Oberstar**. Do they have anybody in those regional offices charged with Buy America responsibilities?

Mr. **Rezendes**. Not that I know of. But there are about 15 to 20 people per regional office throughout the country.

Mr. **Oberstar**. There are 15 to 20 people per regional office?

Mr. **Rezendes**. Yes.

Mr. **Oberstar**. Throughout the country?

Mr. **Rezendes**. Right. In fact, that is one of our recommendations, that one way to implement the preaward option is to train these regional people so they get involved with the grantees, so that they become expert on the Buy America provisions and can provide advice and counsel to the grantees before they sign a contract so you don't get into a case of negotiating with the bidder after the vehicles are already delivered.

Mr. **Oberstar**. How critical is this preaward period of time? This is when the IFB has been sent out, the bids have come in, and they're evaluating the bids?

Mr. **Rezendes**. That's correct.

Mr. **Oberstar**. That's the period before an award has been made?

Mr. **Rezendes**. And it is before the contract has been signed, and I think that is the critical point.

I think if we want to reduce the enforcement problems, if we want to help the grantee avoid penalties from the Federal Government withholding the grant money, that the most productive option is to work with them ahead of time to make these decisions.

It is difficult to determine what kind of workload that would be for UMTA. But from talking to these personnel, apparently UMTA does about 12 investigations a year on Buy America. I think in fiscal year 1987 they bought approximately 3,600 buses and around 33 rail cars. We couldn't get from them a clear indication as to exactly how many contracts would be involved, but I don't think it would be overwhelming.

Mr. **Oberstar**. In that period of time prior to the contractor or the supplier signing the contract, has there been a vigorous inquiry by UMTA of Buy America compliance? If there had been it would have been possible to avoid the Sacramento situation?

Mr. **Rezendes**. Yes. Absolutely. Yes. In fact, the Sacramento case was identified by the project management oversight contractor. He was the only one of the ten contractors they have that has any expertise. The only problem with that is that something like 15 cars had already been manufactured before it was identified, and we think if UMTA had been involved early on, they could have made their determination earlier, advised the grantee, and changes could have been made before any of the vehicles had been produced.

Mr. **Oberstar**. When was the first time GAO recommended to UMTA to involve itself in the preaward phase on Buy America?

Mr. **Rezendes**. The preaward audit is a recent authorization. That came out of the 1987 changes, legislative changes. So, it has only been since 1987 that UMTA has this preaward and postdelivery audit authority.

Mr. **Oberstar**. I thought all agencies had that authority.

Mr. **Rezendes**. They have always provided advice, but it wasn't until the 1987 legislative changes that it required these preaward determinations.

Mr. **Oberstar**. That it required them; that's correct.

Mr. **Rezendes**. Correct.

Mr. **Oberstar**. But what I am saying is that for every agency that I know of has the preaward conference and analysis of the process. Congress came along in the 1987 act and with a hammer over the head of UMTA said, "Do your job right. Now we're going to make you do this and be involved in this phase."

But why weren't they involved in that phase earlier?

Mr. **Rezendes**. Well, in 1985, in our first report in 1985, we recommended a more active role by UMTA. At that time we were looking at other provisions that UMTA is responsible for administering besides Buy America, and we found that it was a pretty passive program. They were relying on self-certification, primarily by the grantee, that they were in compliance with various provisions. We made the point then that self-certification process doesn't work; you needed a more proactive role in the management and the oversight of that program.

Mr. **Oberstar**. Self-certification?

Mr. **Rezendes**. That's right.

Mr. **Oberstar**. Self-certification by the grantee, the local transit authority, is a self-serving operation.

Mr. **Rezendes**. That's right. And that's a concern we have with the preaward audit that UMTA's regulation is about to address. From what we understand of one of the drafts, they will require the grantee to do this preaward audit. We think that that may be a mistake, that UMTA needs to be involved in those audits, not the grantee, because we are going to end up with varied interpretations as we do now between all the grantees as to whether in fact they are in compliance or not.

Mr. **Oberstar**. Do you know of any other Federal agency in where the grantee does its own audit of whether it is in compliance with the law?

Mr. **Rezendes**. Well, there are provisions, for example, in OMB Circular A-102 which requires periodic audits of Federal grants, and CPA firms come in under the single-audit concept where the grantees actually do the contracting with the CPA firm to do periodic audits. So, there are parallels. But we think that in this case UMTA needs to be more active in these.

Mr. **Oberstar**. But the examples you have given concern compliance with technical and financial provisions.

Mr. **Rezendes**. That's correct.

Mr. **Oberstar**. This involves policy and law.

Mr. **Rezendes**. I think that is where the distinction is. I think that is exactly right. You have drawn a good difference between the two. That's correct.

Mr. **Oberstar**. Thank you very much, Mr. Rezendes. I will have further questions.

In the interest of giving other members time to inquire, I will at this time yield to the gentleman from Pennsylvania.

Mr. **Clinger**. Thank you very much, Mr. Chairman.

Just following up on what the chairman was asking you, in the Sacramento situation did Siemens seek clarification from UMTA on the requirements of Buy America?

Mr. **Rezendes**. Yes. In fact, that is where I think the difficulties come in. Without getting into too much detail about the Siemens case, there are two basic exceptions you can have from the Buy America provision. One is that the cost increase from using a domestic product would increase the total project cost, at that time, by 10 percent. That has since changed. The percentage has gone up to 25 percent.

Also, the domestic, on the rolling stock provision, that 50 percent of the cost of the project relates to components that are manufactured in the United States and the product is assembled here.

Under the Siemens case, when they initially submitted their bid, they were 23 percent below cost of the domestic manufacturer. The way the system works, only the grantee can request a waiver from UMTA on a cost basis. Siemens did not do that. They assumed that they could certify that—by the fact that they met that exception—that they could certify that they were okay and they didn't have to seek that exception.

UMTA, once the award was made, said that once Siemens had certified that they were in compliance, since they could not certify they were in compliance without a waiver from UMTA, that they were bound by the Buy America requirements.

It became a very legalistic issue, and it was complex. And in all fairness to all parties, it was very confusing. It was not clear-cut.

Mr. **Clinger**. In your testimony you recommend that UMTA's regional staff be trained to assist in the preaward audits.

Mr. **Rezendes**. Correct.

Mr. **Clinger**. That is with regard to Buy America compliance. While it would clearly be very helpful to have the regional staff be more in tune with what the Buy America requirements are, there is, as I understand it, very limited staff available in the regional offices; in some cases only two or three professional staff.

Mr. **Rezendes**. Yes.

Mr. **Clinger**. And those staff obviously have many duties and responsibilities other than the preaward audit. What role do you really see them playing here?

Mr. **Rezendes**. We think there are a number of options here. We think you can train the regional people to provide assistance to grantees. We think that maybe the regional offices could become involved or headquarters become involved on an exception basis when there is a question by the grantees as to whether there is a compliance problem or not. Or you could even train the project management oversight contractors to do this.

We think there is a number of options. We recognize that there are resource constraints, but we think it is going to take a lot of resources to investigate these cases after the fact and to litigate them and to negotiate with the bidder when it's too late.

Mr. **Clinger**. You indicated that at this time there is literally only one person at UMTA Headquarters who is the fount of all wisdom with regard to Buy America.

Mr. **Rezendes**. That's what I understand, sir. I hope he stays healthy. [Laughter.]

Mr. **Clinger**. Would you disseminate this power out into the regions; in other words, give the regional personnel more authority?

Mr. **Rezendes**. Absolutely. In fact, one of the recommendations we have is that when UMTA makes decisions, that they disseminate those, not only to the regional offices but to the grantees. It's very common, and UMTA and Transportation and GAO very often issue legal decisions and we summarize them, categorize them, and publish them in the Federal Register for everyone to look at.

Mr. **Clinger**. The next question is how far you would go with that? In other words, oftentimes a grantee will request some interpretation or ruling by letter which would be responded to by letter. Would you disseminate that kind of opinion?

Mr. **Rezendes**. No, we really don't have an opinion—we are talking about legal interpretations.

Mr. **Clinger**. Official interpretations that would appear in the Federal Register?

Mr. **Rezendes**. That's correct. Yes. Informal stuff probably would not.

Mr. **Clinger**. What about contracting out preaward audits, would that be an acceptable alternative, assuming that the contractor is well trained?

Mr. REZENDES. Well, we are concerned about that option, since the grantee would be the one who would be contracting that out, not UMTA. I don't know who they would contract with. I am not sure the expertise is out there.

But one of the things that concerns us is that UMTA has the final authority, is the final authority, in making these decisions. Even if the grantee contracted out and the one who did the audit concluded everything was okay, UMTA could still come in after the fact and, based on its interpretations of the same set of facts, reach a different conclusion. We think that since they are going to be the primary people responsible for this to begin with, that they might as well be involved up front.

Mr. CLINGER. You have indicated that in the Sacramento situation there was clearly confusion about the certification and waiver procedures. As I understand it, subsequent to that time UMTA has published regulations with regard to certification and waiver. Have those new rules had any effect? Have they remedied the situation, or does more need to be done?

Mr. REZENDES. I think B. Ann will tell you.

Ms. KLEINDIENST. We have not had the occasion to follow the subject since our work on the Sacramento case. But our look at the regulation that UMTA revised, its revisions, our own opinion is that they go a very long way to clarifying precisely the thing that was very confusing to both the contractor, to Siemens, and the grantee as to exactly what type of certification would be appropriate in this instance. We think that has probably taken care of it.

Mr. CLINGER. So that we should not have a repetition of the Sacramento situation if grantes comply with the present certification and waiver rates?

Ms. KLEINDIENST. At least not a repetition based on the same problem.

Mr. CLINGER. Yes.

Ms. KLEINDIENST. Yes.

Mr. CLINGER. In your view, are there any statutory changes that need to be made, or can this kind of situation be clarified and remedied through the regulatory process?

Mr. REZENDES. Obviously, we agree. In fact, I think our recommendations, if in fact UMTA carried them through, would go a long way to resolving this.

Mr. CLINGER. And no any change in the basic law would be required?

Mr. REZENDES. That's correct.

Mr. CLINGER. In the Sacramento case, Sacramento's application for a waiver after the contractor had certified compliance with Buy America suggests that neither Sacramento nor Siemens really understood what the requirements were.

Mr. REZENDES. Yes. One of the pieces, when you asked earlier about the confusion there, was from what I understand, Siemens had telephoned UMTA and asked a hypothetical question with pretty much the same set of facts as involved in its own case, without disclosing its case, and received apparently an interpretation that was consistent with what Siemens did. But I guess when they actually reviewed the case later, they reached a different conclusion.

Mr. CLINGER. Thank you very much.

Mr. REZENDES. Thank you.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you.

The Chair recognizes the gentleman from Tennessee.

Mr. CLEMENT. I understand that if a company is caught cheating, the punishment is too severe. Would it perhaps make sense to have some graduated punishment system which included a fine or offsetting fee rather than relying on an all-or-nothing system?

Mr. REZENDES. That certainly could work. Obviously, there are penalty policies and fee schedules in other laws.

I think our message here today is not to concentrate so much on the enforcement aspect but rather, particularly with rolling stock, it's a rather complex area subject to misinterpretations, that what we would prefer to see is UMTA involved up front in helping grantees understand how to make these determinations rather than coming in after the fact and telling them they made the wrong one.

Mr. CLEMENT. Should there be some minimum dollar amount of a single purchase that would automatically require UMTA to investigate, say, $10 million for a nonrail car purchase?

Mr. REZENDES. We don't have any opinion on that at all.

Mr. CLEMENT. It seems to me that the act is too passive in enforcement, since the law is structured to have members request an investigation. Has anyone devised a way to improve this passive enforcement? I know you have talked about that earlier.

Mr. REZENDES. Yes. In fact, we think UMTA needs to follow our recommendations and have active compliance monitoring. They need to be out there, need to look. They need to, on the triennial reviews, on the project management oversight contractors as well as preaward and postdelivery audits, we think those are all key and need to be done.

Mr. CLEMENT. Thank you.

That's all, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman.

The Chair recognizes the gentlewoman from Connecticut.

Mrs. JOHNSON. Thank you, Mr. Chairman.

In your estimation, the changes that have been made by UMTA in the regulations are as far as they can go in clarifying the complexities of this program?

Mr. REZENDES. Well, there are still some outstanding regulations to be issued implementing the 1987 legislative changes to the program. They are still in draft. We haven't seen them.

We mentioned earlier we are a little concerned about some of them, particularly the one that relates to preaward audits. From what I understand, the draft regulation would require the grantees to conduct those audits. We think UMTA needs to be an active participant in preaward audits to avoid misinterpretations, various misinterpretations by all the grantees throughout the country. We would like to see more consistency.

Mrs. JOHNSON. While UMTA has rather small regional staff, isn't this the kind of thing that once the new regulations are out, through some rather intensive training sessions, regional staff could be prepared to be involved in the preaward process?

Mr. REZENDES. Yes, that's right. In fact, we are recommending that training be improved for regional staff as well as the project management oversight contractors. We think we would like to see more dissemination of their legal rulings and Buy America provisions to the grantees and other interested people.

But basically our concern is that the Buy America provisions as they relate to rolling stock are rather complex, and they are always going to be subject to a case-by-case decision, that it is going to be very difficult for UMTA to issue an all-purpose definition in regulations that is going to clarify this once and for all. And as a result, because of these case-by-case decisions that are going to have to be made, you need effective monitoring by UMTA up front to assist the grantees in making these decisions before they sign the contract rather than after.

Mrs. JOHNSON. Then, what you are saying is that UMTA has personnel who are involved with grantees and contractors, early in the process on other issues.

Mr. REZENDES. That's correct.

Mrs. JOHNSON. And our goal ought to be to make certain that those personnel are educated about Buy America.

Mr. REZENDES. But they are not that familiar. That's correct.

Mrs. JOHNSON. Right. That they should be trained and skilled to be involved in this issue.

Mr. REZENDES. That's correct.

Mrs. JOHNSON. Thank you very much.

Ms. KLEINDIENST. Could I add to that just a moment. Our notion is—and I think the chairman brought this up earlier—we are not recommending that the regional offices necessarily be trained to have the authority to issue an interpretation in the way that right now UMTA's office of chief counsel would do, but if they were adequately trained they could at least at the point of preaward audit and on some other occasions understand how to look at the situation and at least identify where there is a tough issue that needs to be sent back to headquarters for either a final decision or at least an interpretation.

Mrs. JOHNSON. But the goal would be to set up a system that could identify those problems and obtain appropriate rulings so that you don't come in after the fact, causing both Government and the private sector a great deal of cost and grief.

Ms. KLEINDIENST. That's correct.

Mrs. JOHNSON. Thank you.

Mr. OBERSTAR. Thank you.

The gentlewoman from New York.

Ms. SLAUGHTER. Thank you, Mr. Chairman.

One person at UMTA then handles the Buy America compliance workload?

Mr. REZENDES. That's correct.

Ms. SLAUGHTER. How many grants does that person have responsibility for, would you say, in a year's time?

Mr. REZENDES. We tried to get that answer in terms of exactly what the workload is or would be if it were dispersed to the regional offices. Basically, all we know is that this person does about a dozen Buy America investigations a year, that those are kind of detailed, extensive investigations. But he does numerous informal decisions on a daily basis for numerous grantees.

We don't have an exact number as to how many specific contracts would be involved, but we do know, for example, in 1987 there were roughly about 500 new projects, and I believe also in 1987 they procured, I believe, 3,600 buses and 33 rail cars. I don't know exactly how those are broken out in terms of projects that would be subject to Buy America provisions.

Ms. SLAUGHTER. Did you see any evidence at all that having just one person to make that decision caused a bottleneck or delay in the grant process?

Mr. REZENDES. I would say yes.

Ms. SLAUGHTER. This one person I assume would have to work seven days a week. It sounds like a job for a woman, it seems to me. I know we had made the assumption a while ago that it was a man. [Laughter.]

To elaborate on what Ms. Johnson said, even though the regional offices were trained in the process, I suppose the final decision would again have to be made in Washington?

Mr. REZENDES. That's correct. But, you know, one of the things we want to point out is we don't think there would be that many cases that would have to come to Washington, but rather only those that are questionable that would require a definitive interpretation by headquarters, that with the level of understanding out at the regions they could assist the grantees in making most of these decisions out there.

Ms. SLAUGHTER. How much responsibility does the party applying for the grant bear to make certain that they comply with the regulations before they make their application?

Mr. REZENDES. Right now that is where the total responsibility lies, with the grantee.

Ms. SLAUGHTER. All right. So theoretically all UMTA has to do is certify at the regional level—under your recommendation—that that has been done, and Washington would then just have the approval process. Is that correct?

Mr. REZENDES. Well, yes. Let me clarify that a little bit. I think one of our concerns with UMTA's current monitoring process is that they rely too heavily on self-certification by the grantees and the bidders in terms of compliance with Buy America, that we would like to see a more proactive role by UMTA out there to ensure that in fact these certifications are true.

Ms. SLAUGHTER. Is it possible that persons who are applying for the grants don't have enough familiarity with the requirements?

Mr. REZENDES. That's exactly right, and that is exactly where the problem arises is that they don't have the familiarity with that.

Ms. SLAUGHTER. You can envision doing this enforcement and this oversight without any massive expenditures of further Federal monies?

Mr. REZENDES. That's correct.

Ms. SLAUGHTER. I see.

Mr. REZENDES. We think we are focusing primarily on training, I believe.

Ms. SLAUGHTER. All right. So, that should certainly be cost effective.

Thank you very much.

Mr. **Rezendes**. Thank you.

Mr. **Oberstar**. Thank you, Ms. Slaughter. We appreciate your questions and participation.

Picking up on the last point about the regional offices, GAO's previous inquiry into this program focused on the dissemination of information. On page three of your statement: "Regional offices are not required to disseminate rulings to grantees."

Mr. **Rezendes**. Yes.

Mr. **Oberstar**. Why not?

Mr. **Rezendes**. I don't know.

Mr. **Oberstar**. Have you ever asked them about that?

Mr. **Rezendes**. B. Ann, do you know?

Ms. **Kleindienst**. We don't know.

Mr. **Rezendes**. We continue to believe that's important. We think they should do it.

Mr. **Oberstar**. I should think that would be an important part of the oversight process and the responsibility for carrying out the law.

Mr. **Rezendes**. That's right.

Ms. **Kleindienst**. It's left to the discretion of the regional offices individually, I believe.

Mr. **Oberstar**. It seems to me that those legal rulings should be in the hands of all participants. I think we have to assume that the grantees want to comply with the law, and that having the law in hand is at least part of that compliance.

How many PMO's does UMTA have?

Mr. **Rezendes**. We believe it's ten.

Mr. **Oberstar**. Ten, ten separate contractors?

Mr. **Rezendes**. Correct.

Mr. **Oberstar**. Do they get adequate training from UMTA to conduct the preaward and postdelivery audits?

Mr. **Rezendes**. It's our understanding that only one of the ten has sufficient expertise in Buy America provisions to make these interpretations.

Mr. **Oberstar**. Only one?

Mr. **Rezendes**. That's correct.

Mr. **Oberstar**. Have you asked UMTA about this matter and whether they consider it important to train the PMOs to acquaint them with the Buy America requirements?

Mr. **Rezendes**. I think part of the problem is the role of the PMO. Project management oversight is intended primarily for large construction projects, building things, usually, projects over $100 million.

The exclusive purchase of rolling stock probably would not trigger a PMO oversight unless the administrator designated it as a major project and required it.

Mr. **Oberstar**. So, the role of the PMO then——

Mr. **Rezendes**. Is slightly different, although very often it can include rolling stock as part of the total project. And to the extent it does that, they should be aware of Buy America provisions.

Mr. **Oberstar**. Who in the agency is responsible for oversight of contracts involving rolling stock?

Mr. **Rezendes**. There is monitoring mechanisms that UMTA uses: triennial reviews, which they are required every three years to review the grantee's projects. By definition, triennial reviews every three years is not going to be of too much assistance in terms of helping to decide these things up front.

There is the inspector general audits periodically. Those are basically economy and efficiency audits.

There is the OMB A-102 audits. Again, that is an after-the-fact—those are both after-the-fact provisions.

We think the preaward probably is the best opportunity UMTA has in assuring effective compliance before a contract is signed.

Mr. **Oberstar**. Do you think that should be done by someone other than a PMO? Should there be one person assigned with the responsibility, who may have other duties, but one person perhaps in each regional office assigned responsibilities for Buy America?

Ms. **Kleindienst**. We are not suggesting in our recommendation necessarily that UMTA or its regional staff conduct the audit. We are saying they should be directly involved.

An example: Their current approach, as we understand it, is that the grantees might indeed hire their own contractor to conduct this audit before the award of the contract.

We would recommend, in that situation, at minimum that UMTA's regional staff who have been trained could come in and review the conclusions of that contractor's work and to identify particularly difficult problems to raise with headquarters with the office of chief counsel.

We are not suggesting that the regional staff conduct the audit. That is a good deal more work.

Mr. **Rezendes**. Basically, there are various options as a level of involvement as to what UMTA's role could be in these preawards: they could do them all themselves; they could assist others; they could provide oversight of these preawards. There are various gradations of their involvement. But we think there should be some kind of UMTA involvement in them.

Mr. **Oberstar**. UMTA has ultimate responsibility.

Mr. **Rezendes**. That's correct.

Mr. **Oberstar**. They may contract it out to someone else, but they have ultimate responsibility both for the financial aspects and for the policy implications and directives of the act itself.

Mr. **Rezendes**. That's right.

Mr. **Oberstar**. So, they should have lodged within the agency responsibility in one official, it seems to me, for the Buy America provisions, and in addition, it would not seem to me too much of a responsibility to disperse that role throughout the regional offices.

Mr. **Rezendes**. I tend to agree.

Mr. **Oberstar**. We will take a ten-minute recess to vote and will resume on this point when we return.

[Recess.]

Mr. **Oberstar**. The subcommittee will resume its sitting.

Mr. Rezendes, under the 1987 act, Public Law 100-17, section 319 amends the Urban Mass Transportation Act to require, as we have already discussed, the Secretary to issue regulations requiring preaward and postdelivery audits with respect to any grant under this act for the purchase of buses and other rolling stock.

For the purposes of such audit, manufacturers' certifications shall not be sufficient, and independent inspections and auditing shall be required.

How should UMTA handle that new responsibility, and what recommendations do you have at this point for them to carry out that responsibility in order to assure that Buy America will be effectively adhered to?

Mr. REZENDES. We have a little concern in this area. The regulation is not out yet. They are still drafting it.

Mr. OBERSTAR. Hasn't it been a year?

Mr. REZENDES. Yes, it's a long time.

Mr. OBERSTAR. That is a long time for an agency to issue a regulation, isn't it?

Mr. REZENDES. Yes, it is.

But from what we understand, they are considering requiring the grantee to conduct these preaward audits. We have a little concern with that. As we talked earlier, we would like to see UMTA become an active participant in these preaward audits.

There are various options and various levels of participation, but we think that whether it's the regional offices involved, whether it's headquarters involvement, whether it's on an exception basis or just additional training to PMO's and various other people, that they need to have some kind of active participation to ensure that the preaward audits do in fact identify the problems and the Buy America requirements and those are resolved ahead of time. We don't think it's good to just put it out to the grantees and require them to do the preaward audits. They still need some kind of UMTA involvement in these audits.

Mr. OBERSTAR. Are you concerned that UMTA will simply follow an old practice, hand the responsibility over to the grantees, and not carry it out themselves?

Mr. REZENDES. That's exactly right. And we are concerned that this is going to become another self-certification process. And we had problems, as we reported on 1985, that self-certification doesn't work.

Mr. OBERSTAR. Self-certification, under the new law, would not only be a disaster, it would be a circumvention of the law.

Mr. REZENDES. That's right.

Mr. OBERSTAR. While the language is clear, the purpose is also—or at least should be—clear to make UMTA an active participant in the supervision of this act.

Mr. REZENDES. And we totally endorse that. We think they are the only ones that have the authority and the responsibility to make these decisions and they should be making them up front.

Mr. OBERSTAR. If the law can't make them do that, how then shall the law be carried out?

Mr. REZENDES. Well, we're not sure that the law hasn't made them do that yet. They still haven't issued the implementing regulations. I think the jury is still out. But we are watching closely, and we are concerned.

Mr. OBERSTAR. Should those audits be extended to include all new-start rail projects rather than just the rolling stock?

Mr. **Rezendes**. We haven't done any detailed analysis as to whether that is productive. But I can tell you my personal view is that I think that would be a productive thing to do.

Mr. **Oberstar**. Thank you.

As far as you know, has UMTA ever withheld grant money or sued a grantee for failure to comply with Buy America?

Mr. **Rezendes**. I'm not sure.

Do you know?

Ms. **Kleindienst**. I am not sure either. I do know that they put Sacramento on notice a year ago last spring that they intended to withhold part of their grant money. That was in connection with a separate and second instance of noncompliance which we touch on briefly in our report.

What I do not know is whether that ever in fact was followed through.

Mr. **Rezendes**. What we can do for you is characterize their normal enforcement process, which is basically working with the grantee and the contractor to reach a settlement. That is typical. Whether in fact they have actually withheld funds, we're not really sure. But the standard operating procedure there is to work with the grantee and the contractor to resolve this somehow.

Mr. **Oberstar**. But there doesn't seem to be vigorous participation on the part of UMTA in any of these issues.

Are there instances, given that statement, where UMTA has chosen not to use their enforcement options even though they should have?

Mr. **Rezendes**. We haven't reviewed all their enforcement cases. We limited our work on Buy America to the Sacramento instance. I really couldn't say. I don't know.

Mr. **Oberstar**. I want to return to a comment made by one of our colleagues earlier about the disparity in the enforcement process where on the one hand there is the option of withholding of grants funds which is claimed by UMTA to be so severe that it would disrupt projects and be counterproductive, and on the other hand doing nothing. Under the current guidelines and regulations of the pre-1987 act that UMTA is operating under, isn't there something in between those two extremes? Can they issue penalties? Doesn't any Government agency have authority to issue penalties for noncompliance?

Mr. **Rezendes**. I don't know about any other Government agency, but we know UMTA's options are rather limited by legislation. They either can withhold grant funds, sue to recover misspent grant funds, or work with the grantee and the contractor to resolve the issue in some kind of equitable fashion.

But there is no authority to issue penalties.

Mr. **Oberstar**. I would assume that something less than withholding of funds would be an authority an agency ordinarily would have.

Mr. **Rezendes**. I am not aware of any.

Mr. **Oberstar**. In other words, if it is not explicitly provided by law, then compliance authority doesn't exist?

Mr. **Rezendes**. Penalty authority doesn't exist.

Mr. **Oberstar**. I mean penalty authority doesn't exist.

Mr. **Rezendes**. I believe that's correct, yes.

Mr. **McGrail**. Yes, Mr. Chairman.

Mr. **Oberstar**. Ms. Kleindienst?

Ms. **Kleindienst**. When it comes to penalties against a contractor, there is in fact a penalty, a financial penalty, inherent in the kind of settlement that UMTA made with Sacramento and with Siemens. That is, in the compliance agreement that UMTA came to with Sacramento and Siemens where Siemens was required, with respect to the remaining cars to be built, to take a different approach.

In fact, that does cost—did cost—the contractor a fair amount of money, I understand from Siemens, something like $2 million of additional cost, for which of course they are not reimbursed. So that it amounts to a built-in penalty, that approach.

Mr. **Rezendes**. I am assuming you are referring to civil penalties. As you know, you know, if there is willful falsification of any part of it, there are Federal criminal penalties that would apply.

Mr. **Oberstar**. Yes, those would be criminal penalties.

Mr. **Rezendes**. That's correct.

Mr. **Oberstar**. But I am referring to civil penalties. There are none?

Mr. **Rezendes**. Not that we're aware of.

Mr. **Oberstar**. No general contract law under which these contracts would fall?

Mr. **Rezendes**. No, sir.

Mr. **Oberstar**. All right.

Based on existing regulations under what circumstances can UMTA grant a public interest waiver of Buy America?

Mr. **Rezendes**. Basically, there is no general overall criteria to use. UMTA makes those decisions on a case-by-case basis based on the given facts of any given case.

Mr. **Oberstar**. There is no provision in the law for a waiver?

Mr. **Rezendes**. Oh, yes, there's a waiver provision that is in effect.

Mr. **Oberstar**. Yes.

Mr. **Rezendes**. Oh, I thought you meant what kind of criteria did they use to meet the waiver.

Mr. **Oberstar**. That is what I am getting at. There is a general provision.

Mr. **Rezendes**. There is a general provision.

Mr. **Oberstar**. But are there any criteria defined in the regulations?

Mr. **Rezendes**. No. No, there is not. It's a case-by-case basis based on UMTA's determination with the set of facts presented.

Mr. **Oberstar**. All right.

Is UMTA's interpretation of a price-differential waiver that such a waiver can be applied to parts of a contract rather than to the overall project contract? Is that an appropriate interpretation?

Mr. **Rezendes**. We didn't do a legal—this is getting into a very legal area now in terms of definition as to what is a project and what is not. They probably do. I don't know how appropriate their decisions have been in the past, but they probably do.

For example, just building the Washington Metro, that's one project. Obviously, applying the overall cost differential to the entire Metro system probably wouldn't make sense. But there are various segments of that project—buying rail cars, building stations, perhaps laying the track—that could be defined as identifiable projects.

I don't have any definition for you or I don't think there's anything I could tell you that would clarify how you define those projects. But I think they do have some discretion in terms of grouping various elements of an overall project to make these determinations.

Mr. OBERSTAR. Well, clearly, it is artful on the part of Government agencies to segment contracts so as to avoid compliance with the law.

Mr. REZENDES. Well, they could do that, and I am sure UMTA does whatever they think is in their interest.

Mr. OBERSTAR. And the Federal Highway Administration did a few years ago until I caught them. [Laughter.]

Mr. REZENDES. Yes.

I guess the difficulty is—and I guess the point I am trying to make—is the difficulty of coming up with a regulation or criterion that is specific enough to cover all cases clearly. That is the difficulty, I think.

Mr. OBERSTAR. One final question. Is granting a nonavailability waiver—in a case which we will discuss later—on aesthetic reasons alone, a suitable interpretation of Buy America regulations?

Mr. REZENDES. We are not that familiar with the case other than generalities of it. But it seems that it is probably not illegal. My personal opinion is it's probably inappropriate, but probably not illegal.

Mr. OBERSTAR. That is so subjective a matter.

Mr. REZENDES. Yes.

Mr. OBERSTAR. Aesthetic grounds.

Mr. REZENDES. Another area very difficult to define.

Mr. OBERSTAR. Yes.

Mr. REZENDES. That's correct.

Mr. OBERSTAR. Thank you.

The gentleman from Pennsylvania?

Mr. CLINGER. No questions, Mr. Chairman.

Mr. OBERSTAR. No further questions?

Mr. REZENDES. Thank you.

Mr. OBERSTAR. Thank you very, very much for illuminating so many technical aspects of this very complex law. We shall return to GAO for further consultation as we proceed in this matter of oversight of Buy America.

Mr. REZENDES. Thank you very much, Mr. Chairman.

Mr. MCGRAIL. Thank you, sir.

Ms. KLEINDIENST. Thank you, Mr. Chairman.

[Mr. Rezendes' prepared statement follows:]

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Urban Mass Transportation Administration's Enforcement of Buy America Provisions of the Surface Transportation Assistance Act

Statement of
Victor S. Rezendes, Associate Director
Resources, Community, and Economic
Development Division

Before the
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
House of Representatives

GAO/T-RCED-88-33

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before the Subcommittee to discuss the findings of two prior GAO reviews[1] about the Urban Mass Transportation Administration's (UMTA) monitoring and enforcement of the Buy America provision of the Surface Transportation Assistance Act of 1982. Our February 1985 report discussed UMTA's efforts to ensure that grantees were complying with selected federal requirements. Our September 1987 fact sheet specifically examined the enforcement of the Buy America requirement in Sacramento.

Our testimony today will make three points based on our past reviews. First, the Buy America requirement is complex and subject to misinterpretation. Second, UMTA's approaches to grantee oversight are not structured to monitor for compliance with the Buy America requirement. Third, UMTA does not have precise guidance for choosing appropriate enforcement options in cases of noncompliance with federal requirements.

BACKGROUND

UMTA provides federal grant funds for mass transportation projects. In fiscal year 1987, UMTA provided nearly $2.5 billion in capital grants for 526 new projects. As a condition of receiving grants, grantees may certify compliance with various federal requirements. Grantees must include, in a bid specification for procurement, a requirement that bidders certify compliance with the Buy America requirement.

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[1] UMTA Needs Better Assurance That Grantees Comply With Selected Federal Requirements (GAO/RCED-85-26, Feb. 19, 1985), and Buy America Requirements: Federal Enforcement Questioned In Sacramento Mass Transit Procurement (GAO/RCED-87-162FS, Sept. 1, 1987).

The Buy America requirement generally provides that only domestic steel and manufactured products are to be used in federally funded capital projects. The requirement is waived if the Secretary of Transportation finds that: (1) it is inconsistent with the public interest; (2) quality materials and products are not available in the United States; (3) the project involves rolling stock, in which case a certain percentage[2] of the rolling stock cost must be domestic and final assembly must be in the United States; or (4) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

BUY AMERICA REQUIREMENT IS SUBJECT TO MISINTERPRETATION

We found that the Buy America requirement is complex and subject to misinterpretation by UMTA, grantees, and third-party contractors. In our 1987 review, we found that the Buy America violation was the result of misinterpretation of the requirement. The contractor and UMTA arrived at different interpretations of the requirement. The dispute focused on definitional differences between "manufacture" and "assembly" and also "component" and "subcomponent."

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[2] Currently more than 50 percent of all subcomponents and components must be produced in the United States; this increases to 55 percent on October 1, 1989, and to 60 percent on October 1, 1991.

The contractor used foreign light-rail-vehicle chassis parts to produce the chassis in a Sacramento facility, believing this constituted domestic "manufacture" of a major "component" of the vehicle. UMTA disagreed, claiming the chassis was "assembled" not "manufactured" in Sacramento. UMTA further claimed that since the foreign parts were the only manufactured parts of the chassis, they qualified as "components" rather than "subcomponents". The significance of this is that while each component must be treated as entirely foreign or entirely domestic, the origin of subcomponents is immaterial. Because of this, UMTA considered the chassis to be foreign made, causing the total vehicle to exceed the domestic content requirement.

The Congress amended the act in 1987 to clarify the compliance requirements by requiring subcomponents to be counted toward meeting the Buy America domestic content standard. UMTA has not yet published regulations implementing this change.

Because it is difficult to draft a regulation that will provide an all-purpose definition of these and other complex concepts, further clarification of Buy America usually involves compliance monitoring and case-by-case decisions by UMTA's Office of Chief Counsel. In 1985, in order to increase the understanding of and compliance with UMTA's regulations, we recommended that UMTA disseminate its legal rulings on regulations to all grantees and UMTA regional offices. According to UMTA, legal rulings are currently disseminated to all regional offices, but regional offices are not required to disseminate the rulings to grantees.

We continue to believe that dissemination of UMTA's decisions to grantees would, over time, provide a broader, more consistent understanding of the Buy America requirement.

WEAKNESSES IN CURRENT COMPLIANCE MONITORING APPROACHES

Effective monitoring can help avert compliance problems with the Buy America requirement if it is conducted before contracts are awarded. Our 1985 review found that grantees certified compliance with federal requirements and UMTA's compliance monitoring consisted of DOT Inspector General audits, independent audits of grantees required by Office of Management and Budget Circular A-102, and third-party complaints. However, we noted that these mechanisms are not structured to focus on compliance with UMTA regulations and concluded that UMTA needed better assurance that grantees comply with selected federal requirements. Since then, three other potential Buy America compliance monitoring approaches have been made available to UMTA: triennial reviews, project management oversight, and preaward and postdelivery audits.

UMTA is required to perform, at least once every 3 years, a full review of a grant recipient's compliance with all statutory and administrative requirements. In our 1985 report, we recommended that UMTA's triennial reviews emphasize compliance with those requirements, such as Buy America, that are not routinely covered by Inspector General and independent audits. However, since the triennial review examines each grantee only once every 3 years, it may not provide routine oversight of Buy America for every grantee procurement. Moreover, UMTA's current triennial review guidance on Buy America is limited to: (1) ensuring that a Buy America provision is in the grantee's procurement solicitations; (2) ensuring the grantee has obtained Buy America certifications; and (3) checking whether any waivers had been granted or requested. The triennial review does not provide routine or comprehensive oversight of individual procurements before a contract is signed.

The purpose of project management oversight is to ensure that major capital projects are completed on time, within budget, constructed in accordance with approved plans, and efficiently and effectively implemented. In 1987, Congress authorized UMTA grant funds to be set aside to contract for project management oversight. This oversight, however, is not likely to provide a timely or consistent review of the Buy America requirement for all procurements. In 1987, we reported that a Buy America violation in Sacramento was first identified by the project management oversight contractor, but only after the first 15 vehicles had already been completed. Furthermore, UMTA's proposed regulation on project management oversight reviews does not specifically mention compliance with Buy America and would be limited to major capital projects. Since project management oversight is intended primarily for large construction activities, a major capital project would not involve the exclusive acquisition of rolling stock, vehicle maintenance or rehabilitation, or projects of less than $100 million unless the UMTA administrator designates the project to be "major."

The preaward aspect of the preaward and postdelivery audit requirement, established in 1987, offers the best opportunity for timely and comprehensive compliance monitoring of the Buy America requirement, although it only applies to the procurement of rolling stock. The requirement for a preaward audit was intended to ensure that compliance with the Buy America requirement is firmly established before a grantee signs a contract, and before a grantee formally accepts a contractor's products. In Sacramento, a preaward audit may have avoided the misinterpretation of and subsequent noncompliance with Buy America before the contract was awarded.

UMTA has not yet published regulations implementing the preaward and postdelivery audit requirement. We understand that UMTA is preparing a draft regulation that will place the responsibility for these audits with its grantees, who might conduct such audits directly or contract for them. In either case, UMTA would not make the initial compliance interpretations. We are concerned that this approach may result in a variety of grantee interpretations of the complex Buy America requirement at the preaward stage, that could later be subject to different interpretations by UMTA. In short, UMTA's current plan will not ensure an authoritative compliance review before a contract is signed.

Since UMTA alone has the authority to make final interpretations of the Buy America requirement, its involvement in a preaward audit could assist the interpretation and compliance monitoring of Buy America before a contract is awarded. UMTA should consider several options for ensuring timely and comprehensive compliance:

--Training UMTA regional staff to assist in audits of Buy America requirements.

--Reviewing audit interpretations that are identified by grantees and UMTA's regional offices as questionable.

--Training and utilizing project management oversight contractors to provide review of the Buy America requirement during all phases of major capital projects.

ENFORCEMENT GUIDANCE TOO GENERAL

When UMTA determines that a grantee is not complying with federal requirements, it can choose among several options. For example, UMTA can withhold grant moneys until corrective action is taken, sue the grantee to recover improperly used moneys, or work with the grantee to achieve compliance. Although we did not identify specific problems with UMTA's enforcement actions, we recommended, in 1985, that UMTA establish guidance for choosing appropriate enforcement action when noncompliance was identified. We listed the types of factors UMTA's regional offices might consider in deciding on the appropriate enforcement option: the impact of noncompliance on third parties, the involvement of fraud, good faith efforts by the grantee to correct its problems, and the need for UMTA to repeatedly correct the same noncompliance by a grantee.

In response to our recommendation, UMTA stated that its triennial review notice contains guidelines for enforcement options available when noncompliance is identified. However, UMTA's triennial review guidance on the use of enforcement options is very general. The guidance merely lists enforcement options and states that UMTA may "take other action as appropriate depending on the severity of noncompliance and the grantee's ability and willingness to implement corrective actions." The guidance also states, "Corrective actions will be discussed with the grantee and monitored by the Regional Office to ensure that compliance is achieved in a timely manner."

We are concerned that UMTA's general guidance may not be very helpful to its regional staff in choosing appropriate enforcement options. We understand that the complex circumstances surrounding any instance of noncompliance preclude the use of regulations which attempt to define specific penalties for specific violations. Regional offices must have some degree of discretion in choosing an enforcement option. Nevertheless, in order to promote consistent use of enforcement options among regional offices and to accelerate the resolution of noncompliance cases, UMTA should attempt to establish more precise guidelines for the use of enforcement options.

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In summary, the Buy America requirement is complex, subject to misinterpretation, and not easily clarified by an all-purpose definition in regulations. The dissemination of UMTA's decisions to grantees, in addition to the issuance of new regulations that implement the 1987 changes, would provide a better understanding of the Buy America requirement. UMTA's involvement in a preaward audit would further assist the interpretation and compliance monitoring of the Buy America requirement. Finally, more precise UMTA guidelines for the use of enforcement options when noncompliance is identified would promote consistency among regions and accelerate the resolution of noncompliance cases.

Accordingly, we recommend that the Secretary of Transportation direct the UMTA administrator to: (1) routinely disseminate UMTA's legal rulings on Buy America to all grantees, (2) provide for UMTA's direct involvement in the preaward audit of rolling stock procurements, and (3) establish more precise guidelines for the use of enforcement options when noncompliance with Buy America is identified.

This concludes my testimony, Mr. Chairman. I will be happy to answer any questions you might have at this time.

Mr. **Oberstar**. Our next witnesses comprise a panel including Mr. Richard B. Griffin, Jr., Director of Government Affairs, General Signal Company; and Mr. Larry Salci, President of Bombardier Corporation.

Welcome to our hearing. Before you take your seats, would you please raise your right hands.

[Witnesses sworn.]

Mr. **Oberstar**. We appreciate your participation in the hearing today and the unique perspective you bring to the issues at hand.

We have your complete testimony. You may deliver it as written or summarize it as you see fit.

Mr. Salci?

TESTIMONY OF LARRY E. SALCI, PRESIDENT, BOMBARDIER CORPORATION; AND RICHARD B. GRIFFIN, JR., DIRECTOR OF GOVERNMENT AFFAIRS, GENERAL SIGNAL COMPANY

Mr. **Salci**. Mr. Chairman and members of the committee, I am Larry Salci, President of the Bombardier Corporation of Washington, D.C., and President of Pullman Technology, Inc., a wholly owned subsidiary of the Bombardier Corporation with corporate offices also in Washington.

I appear before you in my capacity as chairman of the Railway Progress Institute Passenger Transportation Committee, which is the international trade association of suppliers to rail transportation systems.

With me is a member of that committee, Mr. Griffin, Director of Government Relations for General Signal Corporation. General Signal is involved in the rail transit supply industry through its New York Air Brake Company of Watertown, New York, and General Railway Signal Company of Rochester, New York.

We are grateful to the United States Congress for having written the Buy America requirements into law and then strengthening them, and we appreciate very much this opportunity to contribute our firsthand knowledge to this committee's oversight hearing on how the Urban Mass Transit Administration has responded to the wishes of Congress insofar as Buy America is concerned.

Our response is this: Not very well. We thoroughly document that assertion in an extensive statement presented for the record, Mr. Chairman. At this time we will present brief remarks highlighting pertinent points of that statement, and we ask that our full statement with exhibits be entered in the record for the hearing.

Mr. **Oberstar**. Without objection, that material will be included in the hearing record.

Mr. **Salci**. Thank you. And of course, Mr. Chairman, we invite questions at any time.

In adopting the Buy America language in the Surface Transportation Act of 1978, Congress sought to maintain U.S. jobs and to conserve the U.S. capability to manufacture transit equipment. The results have been mixed. In the positive sense, Buy America has maintained a measure of stability in the United States transit supply industry by encouraging foreign manufacturers to obtain a large percentage of their components and subsystems from U.S.

companies. And they have brought about the establishment of final-assembly shops for rail cars.

On the downside, however, the U.S. rail car building industry as it existed ten years ago has been virtually wiped out, with the exception of Pullman Technology, which was recently acquired by the Bombardier Corporation.

Why did the domestic car builders fail? There were four domestic practices that exacerbated their problems with the subsidized foreign competition. These were: one-sided contractual terms and conditions; a lack of standardization in rail cars; labor problems compounded by new Federal legislation; increased management problems—and all occurring at a time when the dollar was grossly overvalued, providing economic advantage to foreign suppliers bidding on U.S. contracts.

However, the overriding factor that made it impossible for domestic rail car builders to cope was the incursion of foreign competitors. They offered bids at less than full cost, with two goals in mind: gain an inroad into the United States market, and maintain their labor and manufacturing base at home.

In this effort, the foreign companies have commitments from their central Governments to help them. Their Governments, generally speaking, function as partners to the rail car and subsystem manufacturers. The Governments provide research, design, development, and sales support and, often, financing.

Those companies have the freedom to form consortia, which we have not had until very recently, and to engage in other business practices that would violate antitrust laws if we did likewise in the U.S. They have significant tax advantages, and they are free from such costly measures as complying with our requirements of OSHA, EPA, and/or DBE laws. Sometimes the manufacturing entities are in fact owned by their Governments. Finally, they are protected in their home markets from foreign competition.

Obviously, Mr. Chairman, there is no free or fair trade in this arena. That is why Buy America was enacted a decade ago in an attempt to create a level playing field for domestic industry.

At this point I want to emphasize as vigorously as I can that we have not asked and are not asking for anything more than a level playing field here in our country to compete. Congress has responded to our requests. Unfortunately, U.S. rail car manufacturers were either driven out of business or their assets were sold. The question is why.

I would like now to turn to Mr. Griffin, who will offer a brief account.

Mr. Griffin. Good morning, Mr. Chairman. I also appreciate very much the opportunity to appear here today.

One reason why so many rail car builders were driven out of business is that those with primary responsibility for enforcing Buy America, the transit operators, had and have today little incentive to enforce it. Such national objectives established by Congress are far removed from their concerns. They are primarily interested in getting the biggest immediate bang for their always limited bucks.

The counterproductive impact on U.S. jobs which occurs when a foreign transit manufacturer obtains a U.S. order is not an important concern to the operator. This is underscored when I note that the transit operators' trade association, the American Public Transit Association, which plays an active advocacy role in support of transit with Congress, is not here today. This organization, which has conducted many effective training sessions for grantees to teach them how to comply with Federal requirements has, to my knowledge, never offered such a course on Buy America for the transit operator.

A second reason for Buy America's lack of effectiveness is that UMTA has felt that it has too small a staff to police the properties to uncover violations and, frankly, often does not give Buy America the priority attention it deserves.

For example, the Surface Transportation and Uniform Relocation Assistance Act of 1987 sought to rectify many of the problems with Buy America. Yet, after more than a year, as has been pointed out already this morning, UMTA has yet to issue new regulations to implement the legislation.

As matters stand now, UMTA must rely upon the transit operators to review certification of compliance. Most operators have been content to accept at face value the assertions by foreign contractors that they are in compliance. With such lax enforcement, the foreign manufacturer came to regard the Buy America requirements as something which could be ignored or successfully circumvented.

The most flagrant violation of Buy America that we know of occurred in the Sacramento Rapid Transit District's purchase of rail cars. That transit agency contracted for 26 light rail vehicles with Siemens Energy and Automation, Inc., and then UMTA was asked to waive Buy America's requirements. UMTA refused, but did nothing further until several years later when it was pressured into conducting a full-scale investigation.

Meanwhile, of course, work went forward even though the Sacramento agency knew that Buy America was an issue.

UMTA's investigation showed Siemens to be in substantial violation of Buy America. Actual domestic content was 10 to 15 percent, far from the statutory requirement that the vehicle be manufactured with more than 50 percent U.S. content by cost.

Clearly, UMTA and Sacramento were lax in enforcing Buy America. How was the situation resolved? UMTA's administrator exercised his discretion and waived Buy America requirements for the first 15 rail cars delivered; for the remaining 11 he agreed to Siemens' compliance proposal even though some would say their compliance is questionable at least under the spirit of Buy America.

This case demonstrates two major flaws in the compliance system. First, there is no automatic trigger for an UMTA Buy America investigation. Second, the only penalty, debarment, is so severe that UMTA is loath to use it.

Attached to our statement is a report from the January 1988 issue of Railway Age which forecasts orders from 20 American operating systems for approximately 1,390 to 1,500 passenger cars.

The potential market is something on the order of $2.5 billion over the next five years. This is the market for rail cars alone.

What does that mean to us in the rail supply industry? If all that $2.5 billion were to be spent within the United States, we believe it would have an overall effect on the economy of approximately $6.5 billion. We estimate that the $2.5 billion spent in this country would result in a year's employment for 106,500 persons. This is indeed a significant marketplace and a significant number of jobs.

An effective Buy America can help ensure that the benefits remain at home.

I will now ask Mr. Salci to outline how we feel Congress can improve Buy America. Thank you very much, sir.

Mr. SALCI. In the time that remains, Mr. Chairman, I will summarize our recommendations to the subcommittee. Congress must ensure that UMTA is vigorously enforcing the law.

First, when domestic content is determined, the new law requires that subcomponents must be examined strictly as components to prevent the situation whereby "American components" can be created from 100 percent foreign subassemblies by putting them together in a final product at some U.S. location. Congress should scrutinize UMTA's and the transit operators' proposed method of compliance.

Second, UMTA must decide who will conduct the preaward and postdelivery audits required by law, and the audits must be accomplished in an unbiased fashion. Congress should ensure that UMTA's proposed regulation provides for this.

Third, UMTA must be encouraged to establish an active rather than a passive posture for verifying compliance with its own regulations. UMTA should be required to review as a matter of routine all rail car and all equipment procurements of over $10 million.

As far as the legislative agenda is concerned, we recommend the following:

One, an enforceable schedule of penalties for noncompliance. An intermediate penalty might be 25 percent of the total value of the contract, payable to both UMTA and/or the transit property. Alternatively, a foreign company might be precluded from participating in any UMTA-funded program for a period of five years.

Two, a requirement that precludes the separation of Federal funds from State and local funds in the procurement process from the Buy America viewpoint. This would prevent a transit agency from claiming it is using only State and local funds for a portion of a rail transit project, even though the total project could be not completed without Federal money, most of which are in the 80 percent range.

This necessarily brief presentation may have raised a number of questions, Mr. Chairman. If so, we welcome them. We are most eager to see the situation set forth clearly.

Mr. OBERSTAR. Thank you very much for your presentation and for summarizing your very extensive, detailed statement, which of course will appear in full in the hearing record.

I would like to go back to something that you alluded to but haven't covered. That is, non-Buy America causes for the decline of the domestic industry. Although it's touched upon in your statement, could you just summarize, sort of set the stage for the issue at hand?

Mr. SALCI. Well, I can speak from experience, Mr. Chairman, having been the current President of Pullman Technology, a rail car manufacturer of some 60 years and is now owned by Bombardier, and also the former President of Bud Transit, which was sold to Bombardier also a year ago.

Since the late 1970's there have been about just under 3,000 rail cars purchased in the United States, most of which with UMTA monies, and about 90 percent of those cars have been purchased by foreign manufacturers.

There has been an increasing inroad with foreign manufacturers having virtually no barriers to entry into the U.S. marketplace, yet their markets, those of the European Community and Japan in particular, are virtually closed to domestic manufacturers. I think that is the point that I believe you are alluding to.

Mr. OBERSTAR. That is one of the very important points. I know that in France the French Government has flat-out precluded U.S. rail companies from competing for inner-city rail as well as urban transit systems, and yet we produce some of the finest rail anywhere in the world.

Mr. SALCI. That's correct.

Mr. OBERSTAR. We can't sell it in France. We can't get our foot in the door. But they want to sell their product over here in the United States under the most liberal terms of the world's most open free market.

But there were some other factors too, such as the domestic market; the lack of standardization that you referred to, and the complexity of the product itself, and each community wanting something, tailor-designed for its own particular needs. Those were also burdens for an industry trying to compete against relatively small, Government-owned, in many cases Government-subsidized, foreign competition.

Mr. SALCI. Correct. If I can expand on that a bit, Mr. Chairman. Specific instances—because the problem is a complex one—many of the new systems built in America—Atlanta, Baltimore, Miami, San Francisco, Washington Metro, which are the new systems of the last 15 years—virtually have all had cars designed specifically to their systems.

A rail car is a complex animal. It requires extensive lead time. Unfortunately, oftentimes the lead times provided for in contracts were really not sufficient and the manufacturers were equally guilty in agreeing to terms and conditions, and there were some foreign manufacturers who also won contracts—Atlanta, I guess, being a case in point—where the contract was awarded to a company at the time called Franco Belge. They went bankrupt during the performance of the contract. The French Government reorganized them and formed a company called Franco Rail, and that company has since went through two more reorganizations due to bankruptcy.

So, the problem that we have had is that some of these problems I have enumerated upon have been equally difficult for foreign manufacturers to handle, but they have survived through Government support and reorganization.

Mr. **Oberstar**. That is the difference, because they have had this ready cash from the national till to support their operations, whereas if you're in the U.S. market and go under, the Government doesn't come and bail you out.

Mr. **Salci**. That's correct. You take your lumps.

Mr. **Oberstar**. Except for Chrysler.

Mr. **Salci**. Except for Chrysler. [Laughter.]

Mr. **Oberstar**. What other ways is it possible for foreign competition to sell products in the U.S. below cost; that is, below cost in the country of origin?

Mr. **Salci**. The most direct way, I think, have been for two reasons: One, their home markets are protected. Japan, in particular, which has five major rail companies, the Japanese national railways as well as all of the transit operators in Japan by national procurement policy only buy from their own domestic suppliers or manufacturers. So, they have a reasonably predictable base. And that has always been a problem in this country: not having a reasonably predictable base, since most operators were dependent on Federal financing, which was at times not always certain.

Two, when you have a predictable base at home, you can predict your overheads, et cetera, and it's very easy to bid on what would be termed in financial terms an incremental basis, or less than full cost. It's very difficult to prove, but very easily discernible. And that was happening from a period in the late 1970s, 1979 to 1985, when the real surge of about a dozen foreign manufacturers entered this market at a time when the dollar was at an all-time high. So, they were being paid in U.S. dollars.

The combination of being paid in U.S. dollars, which gave them at that time a 30 to 40 percent currency advantage, at the same time they're bidding incrementally, allowed them very easily to circumvent what at the time was the Buy America requirement that they only had to be ten percent below domestic manufacturers.

That is my opinion on that subject. Mr. Griffin may want to add something to that.

Mr. **Griffin**. I am also a veteran of the wars. I started out in this business with Pullman, now with General Signal, which illustrates perhaps another trend: Buy America has been very successful in keeping the component manufacturer in business, not the manufacturer of rail cars.

In my case, for example, we make brakes for transit and rail systems. We make signaling systems. But we find the market viable. We find that our products are purchased and utilized, to a large extent because of Buy America. The foreign manufacturer, if he is successful in winning a job and if he adheres to the requirements of Buy America, finds that he has to comply with the 50 percent cost of components rule and buys from us.

By the way, this is really in his own best advantage as well because it's a lot easier for warranty purposes to have an American manufacturer close at hand to the transit property to provide the spares or the services necessary throughout the life of the equipment that is sold.

But essentially, Mr. Salci has summed up a very sad situation quite well.

Mr. **Oberstar**. Thank you.

Your testimony alludes to advantages that foreign competition have because of the value-added tax on export sales. Could you explain for the record how that works? How does this value-added tax operate to the advantage of foreign competitors?

Mr. SALCI. Well, in this country, as you know, we have a completely different tax structure. The value-added tax, depending on how it's calculated in foreign countries, and particularly with those countries having specific export policies aimed at exporting transportation equipment, provides them a situation where they get basically relief in their home markets through their tax structure, which varies country to country, and allows them again to offer I guess what we would characterize again as an incremental costing situation compared to the structure here.

Mr. OBERSTAR. Is the value-added tax waived for exports? Is that one of the factors?

Mr. SALCI. Oftentimes, it is, yes. As a matter of national export policy—and I am not isolating on France, but it just so happens that oftentimes that is waived.

Mr. OBERSTAR. I know that in the case of Brazil, for both raw materials and manufactured products from Brazil, there are up to 27 different taxes that are either waived or are constructed as credits, therefore a tax benefit, to the manufacturer for export of that product.

Now, with that menu of tax incentives, it is little wonder that Brazil is such a massive exporter to the U.S. market or that they have one of the largest external debts outside of the United States, for a country less than half our size.

How open are the European and Japanese markets to our products? If you want to sell a component to the same manufacturer who is exporting to the U.S., what level of entry do you have to, say, the market in the EEC or Japan or elsewhere?

Mr. SALCI. Well, from a prime contractor, which would be the real car builder, those markets are virtually closed to American rail car manufacturers.

Mr. OBERSTAR. How are they closed?

Mr. SALCI. Well, they are closed, as I said, through national procurement policies. My experiences, having traveled to nearly all of the major EC countries as well as Japan, seeking opportunities to bid on contracts, I have been advised directly by both their national Governments as well as their transit operators that by their own policies they only buy from domestic manufacturers. That is, France only buys from French manufacturers. The German Bundesbahn only buys from its domestic, et cetera.

There have been some discussions recently about those markets opening. But frankly, I don't know of any U.S. manufacturer that has ever been successful in selling rail cars in either the EC or Japan.

Mr. OBERSTAR. Mr. Griffin.

Mr. GRIFFIN. I just want to echo that. When I was with the Pullman Company ten years ago, we did a study on this very subject, and it conclusively proved that not only did they not want our product, they didn't even want to give us a copy of the request for proposal.

I might add, currently in the supply business, the subsupply business, if we wish to get into the European or the Japanese market, the only realistic way to do it is on a license arrangement. We have to license a manufacturer in that country to use our technology and manufacture that technology in that country to sell to the State-owned rail systems.

Mr. **Oberstar**. So, under their law and practice, whichever fits, you just simply are precluded from competition. Your product is good enough to be included in their rail car if it is sold in the U.S., but they don't want it if it is sold in their own country?

Mr. **Griffin**. You raise a really interesting point. When we meet these foreign manufacturers in the Third World, we can be price competitive. It's a very unique thing. We are and have been price-competitive.

Mr. **Oberstar**. That is very, very significant.

The Chair will yield at this point to the gentleman from Pennsylvania. We have a vote in progress, and we would like to give the gentleman from Pennsylvania an opportunity for questioning.

Mr. Clinger.

Mr. **Clinger**. Thank you very much, Mr. Chairman.

I am wondering, you have indicated that one of your problems has been somewhat inconsistent or weak enforcement of the Buy America provisions. As you noted, we have seen the demise of the rail industry in this country because of various factors. Do you think, had there been appropriate enforcement of the Buy America law, that it would have made any difference in the final analysis? Would we have a rail car industry in this country had Buy America been rigidly enforced over the last ten years?

Mr. **Salci**. I think that maybe it's difficult to predict. I think it would have had a measurable impact. Buy America by itself would have helped but wasn't the total answer. From some of my early remarks, Mr. Congressman, there are trade issues that are equally important to this that have to be weighed as well as international financing issues.

Chairman Oberstar alluded to the previous question about why haven't we been doing business in their markets. Historically, back in the 1950's, 1960's, and 1970's there were license arrangements that were entered into by domestic manufacturers for American technology overseas. I can tell you that a company from Pennsylvania, the Bud Company, which no longer exists in the rail car business, that is, virtually taught the world how to make stainless-steel cars, and those same licensees have competed very successfully in the U.S. marketplace.

Now, the license was the way to enter the market. It turned out to be a long-term strategical, I think, mistake. But at the time, it was the only way we could get in.

So, it's a combination of issues that if they had been addressed simultaneously in a coherent "trade policy/Buy America"—because Buy America really came about because, I think, of a lack of those policies.

Mr. **Clinger**. In your testimony you say that your foreign competitors have offered bids at less than cost, which is the classic dumping situation. Were any dumping actions ever filed with the International Trade Commission in any of those instances?

Mr. SALCI. There have been some. One in particular was brought by the Budd Company back in the early 1970's by a company that ironically I now work for, Bombardier, in the classic case of the New York subway order, the R62A order back in 1982. That issue was basically settled out of court because, as it turned out, New York used its own money to finance, it did not use Federal money to buy the vehicles. So, it basically obviated the dumping issue.

Mr. CLINGER. So, in effect, the industry never has won a trade action?

Mr. SALCI. Not to my knowledge.

Mr. GRIFFIN. When I was with Pullman, we went to Federal court to try to get the award to Breda Constructione Feriovierra of Italy returned for, I think it was, Cleveland, a major car buy from Cleveland. It was some ten years ago; I can't remember the exact details. I remember sitting in Federal court right down here in Washington when we lost the case.

Mr. CLINGER. That's very interesting.

Just one further question at this time. You mentioned that one of the industry's problems was certain management failures. I wonder if you could elaborate on that.

Mr. SALCI. Well, from a management perspective, you know, it's easy to always point and say that the problems in an industry are always created by external factors. But I do think, having been in the industry for the last 15 years, that we did not react as quickly as we should have from a managerial perspective to developing better labor relations. We had a lot of labor contracts that had a lot of restrictive work practices that prohibited the productivity that allowed us to really truly compete at times on a level playing field.

Pullman went through extensive labor problems in the late 1970's and the Budd Company went through extensive labor discussions and tried to renegotiate contracts, unsuccessfully. And I am not blaming labor. I am not blaming management. I am blaming both of them. It was a classic problem where the two simply sat there arguing with each other at a time when all these external factors were compounding the problem which led to their demise.

Mr. CLINGER. And at the time that all this was going on, the foreign competition was coming in and winning contracts?

Mr. SALCI. Yes. I think that the American manufacturers, in their viewpoint, were, number one, predictable. They knew what their cost structures were because of their existing bids in the U.S. Two, there were no barriers to entry of the foreign manufacturers to this market. Three, the dollar was grossly overvalued from 1979 to 1985 by as much as 40 percent. And that is when the damage was done.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. OBERSTAR. The gentlewoman from Maryland.

Mrs. BENTLEY. Thank you, Mr. Chairman.

Mr. Chairman, I do have a statement that I ask unanimous consent to have included.

I want to say to the two gentlemen I'm sorry I wasn't here to hear all of your testimony because I have been pushing very hard on the Buy America provisions.

The one comment that you made in response to a question was about overseas financing. How much of a role did the better terms available overseas, have in selling foreign products?

Mr. SALCI. Well, there is no question that the financial support that many of the foreign exporters had competing against us in this marketplace was very evident from their prices.

I think where it created even a further problem was in international competition. I could speak from direct experience with the Budd Company previously where in non-EC or non-Japanese markets, but basically developing countries, where there is a use of either AID, the Agency for International Development, provides financing, or through the Export Bank, that the game of mixed credits was played. And there are very specific rules about treating a country either as a creditworthy nation or as a "AID nation."

But there were countries in Europe in particular and Japan where mixed-credit financing was offered that virtually was at levels two and three percent when we were exporting through the Export Bank of the U.S. at nine and ten percent. The interest factor was the single largest cost element of the cost of those projects, which are multiyear projects, virtually just simply denied us any competitive chance whatsoever.

Mrs. BENTLEY. You mentioned AID specifically. Years ago—and I am talking about some 20–25 years ago, before the Vietnam War, as a matter of fact—all AID money that was made available to a foreign country had to be spent in this country for the purchase of items. That policy was changed during the Vietnam War.

Do you know of any other country which makes aid money of any kind available to, let's say, developing countries and allows them to spend it wherever they want to?

Mr. SALCI. No.

Mrs. BENTLEY. Thank you.

Mr. OBERSTAR. Thank you.

The Chair will announce a recess until 1:30. The Chair and the ranking member have additional responsibilities we will try to accomplish in that time.

We will resume, continuing with this panel, some additional questions on matters that I would like to pursue.

Mr. SALCI. Thank you.

Mr. GRIFFIN. Thank you, Mr. Chairman.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 1:30 p.m. the same day.]

AFTERNOON SESSION—1:30 P.M.

Mr. OBERSTAR. The subcommittee will resume its sitting.

The Chair apologizes to the witnesses for the delays caused by the House legislative program and other schedule conflicts. We are ready to resume our inquiry into the Urban Mass Transportation Administration's administration of the Buy America Act.

When we broke just preceding the vote, we were reviewing various incentives as well as protective devices that foreign bidders and their Governments employ both to gain a foothold in the U.S. market and to prevent U.S. suppliers from entering foreign markets.

Given that background and those terms, do you think that in your experience with UMTA projects and local transit agencies, that there is awareness among the local grantees of the economic impact of foreign suppliers penetrating and dominating the U.S. market? Are they aware of the negative consequences for our economy? Do they show any concern or awareness or understanding of that issue?

Mr. Salci. I think there is some. However, I think there has been a bit of a dichotomy in that there generally is a strong urban orientation, since most of the rail systems are in urban settings, excluding the inner-city operations in this country, that the unemployment issues and the economic development issues that are germane to the urban activities of big cities, if you look at the rail car procurements since 1980, of the last 25 about 20 have had a requirement placed on them by the procuring entity, the transit authority in conjunction with its community, to have local assembly done in its own locality.

So, what they have been doing is really looking at the more immediate situation, which is jobs for the specific local community buying the cars to have the final assembly of the vehicles done in their community. And that has been evidenced, and we can provide you numbers with the number of contracts awarded and the number that have required local assembly, where shops have been set up, usually through some economic development agency of the community, either the county or the city, that has required that assembly to be done locally.

That has obviously worked against the domestic manufacturers who had major facilities for 40 or 50 years which are not, let's say, portable, you can't put wheels on them and roll them around, but for a foreign manufacturer who may want to get into the U.S. marketplace it's an ideal opportunity.

Mr. Oberstar. To open, in effect, a subsidiary in the community that is purchasing the equipment.

Mr. Salci. Generally what happens—and I will give you a specific example—the Port Authority of New York, which overseas the PATH rail operation, has an economic development activity to generate economic development for the community. That is a very laudable and very good exercise. But in the award of the new cars for the port authority, 95 cars were awarded to Kawasaki. The port authority had an old facility that had been vacated by Otis Elevator. The facility was provided under lease to Kawasaki.

Mr. Oberstar. At very favorable terms?

Mr. Salci. At very favorable terms. The conditions of being able to even be, let's say a compliant bidder was that you had to put a facility within 25 miles of the Statute of Liberty. That was physically spoken to everybody that participated in the prebid award, and there were originally 13 bidders.

But the bottom line is you have a facility that has been set up, still owned by the port authority, leased to Kawasaki. The workers in the facility are hired through a third party, so they don't become employees of the organization. Those employees don't have pensions. They don't have workers compensation, et cetera as traditional companies have, the old ongoing people costs.

So, there is a direct advantage by having something like that set up. And it ends up being a substantial cost differential to the car builder because the car builder's contribution is really only about 25 percent of the car value, believe it or not, and 75 percent of the value of the vehicle are purchased components—propulsion, brakes, air conditioners, door-operating mechanisms, windows, wheels, axles, et cetera.

So that labor advantage has been dramatic, and that has happened repeatedly in many situations. The Sacramento situation was local assembly. Santa Clara has been local assembly. Atlanta has been local assembly. The New York situation local, et cetera.

As I said, about 20 of the last 25 have had some local assembly, and assembly is about half the value of putting the car together, the other half being the physical manufacture of the shell itself.

Mr. OBERSTAR. Are there circumstances in which a unit is shipped to the United States, disassembled here, and reassembled in order to qualify for Buy America on the grounds that the added labor cost of the disassembly and reassembly will be attributed as American value?

Mr. SALCI. I don't know of any specific circumstance along those lines, but there have been many instances where "foreign-manufactured components'—take a truck, its wheels, axles and frames—have come in totally sourced foreign, assembled, and then the total value of the truck being given credit as "an American component," with the truck having a value of, let's say, $200,000 and the labor assembly portion maybe being $10,000.

Mr. OBERSTAR. That labor cost was added to the truck in the U.S. strictly for the purpose of qualifying under the Buy America Act?

Mr. SALCI. Qualifying under the Buy America. And that is what this organization, RPI, was all about a year ago in insisting for the preaward postdelivery audits that included not only the total contract value but the subcomponents, so that the components could be verified where they actually come from.

If you look at the Siemens Sacramento situation, that was exactly what was happening in that situation.

Mr. OBERSTAR. So, the local-assembly requirement, while a gesture at Buy America, actually operates in certain circumstances to the disadvantage of the purpose of the act and of the established American component manufacturers?

Mr. SALCI. It has in certain instances, and I think Mr. Griffin, a components supplier, maybe wants to speak to that.

Mr. GRIFFIN. Absolutely. I might just add that these assembly shops don't always stick around. They exist for perhaps the one order itself. I believe that is the case in Sacramento. They set up a special shop; when the work was done they closed the shop and moved away. So, you have no permanent job impact at all in the local area.

From the component manufacturers' side, we have seen under the previous law it was possible for a foreign manufacturer of, let's say, brakes—we make brakes—to send in all the components for a complete braking system wholly manufactured in a foreign country, usually Europe, assemble them together in a location within the United States, and ship it to the final assembly point, and have that brake assembly count as a 100 percent American part.

Mr. OBERSTAR. Do you feel that the changes in the 1987 Act with specific respect to the matter of the audits, both the preaward and post-delivery audits and the language including subcomponents, will remedy in any substantial way the problems that you have been facing, if effectively administered by UMTA?

Mr. GRIFFIN. That is the key thing. Yes, sir. We do. We worked very hard for those two provisions last year. We worked very hard for them with Congress, and we believe that this is perhaps one of the most significant breakthroughs in the whole Buy America area.

This is particularly so if UMTA is encouraged to actively ensure that the intent of the law is carried out, and is directly involved—because I think UMTA has to play a role here; we heard the GAO this morning say the same thing. UMTA has the skill. UMTA knows the law. UMTA understands the policy ramifications that are laid upon it by Congress. If this takes place, sir, I think if it is enforced properly, this should definitely go a long way towards ameliorating the problems we have seen in the past.

Mr. OBERSTAR. Can administration by one person effectively deal with the problem?

Mr. GRIFFIN. No, sir. I think it must be at a much broader basis throughout UMTA. I think UMTA should play not only a training role, as suggested by the GAO, but I think should be directly involved, perhaps at the regional level, perhaps through subcontractors.

Mr. OBERSTAR. In that context, who should be responsible for preaward and postdelivery audits?

Mr. GRIFFIN. I think the ultimate responsibility should rest with the Administrator of UMTA. He may wish to detail or assign the day-to-day responsibilities to appropriate offices, perhaps at the region, the regional level.

Mr. OBERSTAR. Is it appropriate for UMTA to designate, to subcontract, in effect, responsibility to the grantee, the local transit properties, to monitor compliance?

Mr. GRIFFIN. No, sir. I believe that to date the transit properties have clearly demonstrated that there is no real incentive for them to spend a lot of time assessing Buy America.

Mr. OBERSTAR. While there may be American jobs at stake, they are not concerned about those jobs in their community. Those are American jobs somewhere else in someone else's community; correct?

Mr. GRIFFIN. I sympathize with these transit operators. They have got very difficult jobs. It's a very complex business, and they are directed solely with keeping the trains rolling and the buses rolling. I don't think they have either the interest or the resources available to ensure this part of the law is enforced properly.

Mr. OBERSTAR. I think you're right. I think they are caught with a very difficult choice, as one might say, a Hobson's choice; on the one hand to deliver a transit system at the lowest possible cost and on the other hand a law that says do it with American parts. And where they can get away with the cheapest possible first cost to the public, they are going to do it. Unless they have one of your component producers in their community, they aren't too interested in complying with a law that from their standpoint results in some higher cost even though that lower cost is a subsidy.

Mr. **Griffin**. That's exactly it. Let's not forget, sir, we have proven that we can be cost effective, we can be fully competitive when we deal in the Third World market, when we are dealing apples and apples versus apples on the—it's an overused term—level playing field.

Mr. **Oberstar**. Right. Well, I understand the situation very clearly. The area I represent of northeastern Minnesota produces the world's finest blast furnace feed, called taconite, a low-grade ore processed into a high-grade pellet that has doubled the productivity of the blast furnaces. But if Brazil and other foreign Governments offer innumerable tax subsidies, incentives, and benefits, and eight percent financing and less, simply for the purpose of penetrating U.S. markets, there is no way we can compete with that kind of incentive of Governmental determination accompanied by with an endless deep pocket to continue subsidizing operations.

Mr. **Griffin**. Yes, sir. But the foreign countries have a different philosophy. They believe in maintaining jobs, maintaining an industrial capability at whatever cost.

Mr. **Oberstar**. Thank you.

Mr. Clinger, any further questions?

Mr. **Clinger**. No questions, Mr. Chairman. Thank you.

Mr. **Oberstar**. We greatly appreciate your participation here today.

Mr. **Salci**. Thank you, Mr. Chairman.

Mr. **Griffin**. Thank you, sir.

Mr. **Oberstar**. Thank you.

[Mr. Salci's prepared statement follows:]

Statement of the Railway Progress Institute
Committee on Passenger Transportation
Before the
House Public Works Subcommittee on
Investigations and Oversight

May 12, 1988

Remarks of Larry E. Salci, President, Bombardier Corporation; President, Pullman Technology, Inc. (a wholly owned subsidiary of Bombardier Corporation) Washington, D.C.

The Committee on Passenger Transportation of the Railway Progress Institute, which is the international trade association of suppliers to rail transportation systems, is pleased to submit the following information for the record as a supplement to abbreviated verbal statements.

We are grateful to the United States Congress for having written the Buy America requirement into law, and then strengthening it. And we appreciate very much this opportunity to contribute our first-hand knowledge to this committee's oversight hearing on how the Urban Mass Transportation Administration (UMTA) has followed the wishes of Congress.

Your committee has asked us, "Has UMTA been consistent in its interpretation and application of the Buy America regulations?" No, it has not.

You asked us. "Have enforcement procedures been sufficient to ensure that the Buy America rules are being met?" No, they have not.

Your third question was, "Have the regional offices, states, and/or grantees interpreted the regulations consistently and accurately?" No, they have not.

WHY DO WE NEED BUY AMERICA?

In adopting the Buy America language in the Surface Transportation Act of 1978, Congress had two main objectives: To maintain U.S. jobs, and to conserve the U.S. capability to manufacture transit equipment. At that time, it was felt that Buy America would help reduce the competitive imbalance between the American supply industry and their European and Japanese competitors.

In the intervening decade since the law's passage, the effect of these provisions has been mixed. In the positive sense, they have maintained a measure of stability in the United States transit supply industry by encouraging foreign manufacturers to obtain a large percentage of their components and subsystems from U.S. companies, and they have brought about the establishment of final assembly shops. On the downside, however, the U.S. railcar building industry as it existed 10 years ago has been virtually wiped out. In 1978, there were four domestic manufacturers of rail passenger cars: Boeing-Vertol, The Budd Company, General Electric, and Pullman-Standard. They were the then-survivors in a tough marketplace: Pressed Steel Car Company and J.G. Brill pulled out of the field in 1941, Bethlehem Steel dropped out in the 1940s, American Car & Foundry in the 1950s, St. Louis Car Company, in the early 1970s, and, about the middle of the 1970s, Boeing and Rohn dropped out.

Of those four domestic companies still surviving in 1978, none are in the business of building complete rail cars today.

When looking at this dismal record, one is forced to ask why the industy failed. Attached is an exhibit that sets forth in some detail four domestic practices that exacerbated the domestic railcar building companies' problems with their subsidized foreign competition. In summary, these were one-sided contractual terms and conditions, a lack of standardization in railcars, labor problems compounded by much new federal legislation, and increased management problems.

However, the overriding factor that made it impossible for domestic railcar builders to cope was the incursion of a series of foreign competitors, each of whom demonstrated an eagerness to grasp a segment of the American market. With each successive order, a new competitor from a different country appeared. From their protected domestic markets, they would offer bids at less than cost with two goals in mind: Gain an inroad into the U.S. market and maintain their labor and manufacturing base at home.

Here we see clearly a basic difference between the U.S. and European/Japanese economic and political systems. The overseas manufacturers want to maintain jobs and keep factories in operation. They have commitments from their central governments to help them do this. This was not true for our domestic companies. Generally speaking, the foreign governments function as partners to their railcar and subsystem manufacturers by providing research, design, development and sales support, in addition to financing. The offshore manufacturers have the freedom to form consortia (which we have not had until very recently), and to jointly agree when to bid or not to bid, to designate among themselves the lowest price bidder from their country, and to engage in activities which would be subject to anti-trust challenges if U.S. firms were to behave similarly. Through mechanisms such as the value added tax they have significant tax advantages on export sales. They don't have to comply with such costly measures as OSHA EPA and/or DBE requirements. Sometimes the manufacturing entities are owned by their governments. And, as has been mentioned, the manufacturers are protected at home from foreign competition.

Does this lack of success indicate that the concept behind Buy America is wrong? No. The failure is one of implementation and not, in our opinion, a failed or flawed concept. And don't listen to those who call for free trade in this sector. They just don't know what they're talking about: This is not a free market. Worldwide, it is dependent on government funds for capital and operating support. The customer is a government entity. With the exception of the United States, most of the suppliers are directly or indirectly owned or subsidized by their governments. The only way to level the playing field in this arena is through government action.

CONGRESS'S INTENT WAS NOT CARRIED OUT

Remarks of Richard Griffin, Director, Government Relations
General Signal Corporation - Washington, D.C.

Why hasn't Buy America worked?

Congress enacted Buy America because it viewed the domestic economy from a national viewpoint. It recognized the need to rectify an inequitable situation that was wiping out jobs and eroding away part of the U.S. industrial base. Unfortunately, the intent of Congress in this matter was just not carried out over the years. Recognizing this, Congress was forced to rewrite the law again and again, each time in an attempt to strengthen its effectiveness. Why then didn't it worked as intended?

One reason is that those charged with the primary responsibility for enforcing Buy America, the transit operators, had little incentive to do so. As was pointed out earlier, the European and Japanese systems foster a close, mutually supportive relationship between the various public and private sector entities within their respective countries. All share the twin goals of maintaining jobs and manufacturing capabilities, especially in those sectors of their economies that have a broad national impact: education, defense, communications and, of course, transportation.

The situation here in the United States is quite different, even though there appear to be surface similarities. Here as abroad, the transit systems are operated by governmental, or quasi-governmental entities using tax generated, or tax sheltered funds to underwrite their capital costs and a portion of their operating costs. However, here in the U.S., there is no cozy relationship between operator and supplier, there is no protected domestic market, nor is there an underlying (stated or unstated) social compact that makes the maintenance of jobs and industrial capacity a primary national objective.

In fact, national objectives such as Buy America are far removed from the concerns of those charged with operating transit systems. They are primarily interested in getting the biggest immediate bang for their always-limited bucks, and they don't care about the impact on U.S. jobs which occurs when a foreign transit manufacturer obtains a U.S. order.

These local authorities are deluding themselves if they think they are creating jobs by requiring local assembly, as many have recently. A foreign manufacturer can fulfill the letter of the Buy America requirement by creating a small shop that exists purely for final assembly of railcars for a particular order. While the letter of the law is observed, the spirit is violated because such here today-gone tomorrow shops don't create or help sustain an ongoing carbuilding capability in this country. Incidentally, short term savings from purchasing from foreign manufacturers can turn into long term maintenance nightmares due to dependence upon foreign sources: where the nearest source of spare parts is dependent upon the vagaries of transoceanic shipment, customs clearance, and foreign manufacturers whose priorities are much closer to home.

The buyers of transit rail cars are members of the American Public Transit Association (APTA). Why isn't APTA testifying before the Committee on this issue? APTA maintains an active interest in federal funding matters, and has workshops or internal committee efforts aimed at educating its membership about such federal concerns as Section 13C labor protection, minority business, and the handicapped. However, I know of no ongoing effort to educate their members about Buy America. Why not? Is it because the transit properties don't care? Or is it because, in search of a "cheaper" product, they would rather give lip service to compliance.

A second reason for Buy America's lack of effectiveness is that UMTA has too small a staff to "police" the properties to uncover violations of Buy America. UMTA must rely on the transit properties' certifications that they have complied. Consequently, Buy America investigations have been undertaken only when an interested party, usually an American company, has developed enough information to determine the probability of a violation. Needless to say, it is very difficult to obtain data about one's competitors. Only one transit property has ever requested an investigation. Most of the transit properties have been content to accept certificates of compliance at face value, and have bought foreign products in increasing quantities. And as we have seen, the U.S. car producers have succumbed, with only the sub-suppliers managing to survive, thanks in large part to Buy America.

Curiously enough, the foreign manufacturers, perhaps because in their own countries such requirements are religiously adhered to and enforced, seemed initially to have treated the Buy America requirements more seriously than did the transit properties, and sought out American sub-suppliers. However, with the properties paying lip service to Buy America regulations, and UMTA not agressively ensuring that Buy America was adhered to, it became just a matter of time before Buy America came to be regarded as something which could be ignored, or avoided.

This all came to light when UMTA's Project Management Oversight Contractor relayed news of the blatant disregard of Buy America by the Rapid Transit District of Sacramento, California, and

Siemens Energy and Automation, Inc.. UMTA had to act and an investigation was carried out.

The facts are these:

The Sacramento agency contracted for 26 light rail vehicles with Siemens and then asked UMTA to waive Buy America's requirements. UMTA refused. It did nothing further until, several years later, it was pressured into conducting a full-scale investigation.

The investigation by UMTA found that Siemens was in substantial violation of Buy America. It was determined that, rather than meeting the statutory requirement that the vehicle be manufactured of more than 50 percent U.S. content, by cost, actual domestic content was 10 to 15 percent.

On March 3, 1986, UMTA's Chief Counsel notified the city that they were in non-compliance. At that time, Siemens had completed 15 of the 26 cars contracted for. What is unusual in this case is that this determination was made three years after UMTA's original contract with Sacramento, and two years after UMTA had rejected a request for a waiver from Buy America. For two years, Sacramento knew that Buy America compliance was an issue, and yet it allowed Siemens to proceed.

How did Sacramento and UMTA extricate themselves from this situation?.

In brief, UMTA's Administrator exercised his discretion and waived Buy America requirements for the first 15 railcars delivered. For the remaining 11, he agreed to Siemens' compliance proposal, even though some would say that their compliance is questionable - at least under the spirit of Buy America.

This case clearly demonstrates a number of flaws in the Buy America compliance system. Regardless of the specifics:

1) There is no automatic system to trigger a Buy America investigation.

2) UMTA and Sacramento were lax in their enforcement of Buy America. Presumably other transit agencies are equally lax.

3) The only penalty, debarment, is so severe that UMTA is loath to use it.

What has happened in the meantime to improve the situation? A number of things, but not enough.

Most important was passage of the Surface Transportation and Uniform Relocation Assistance Act of 1987, which rectified many of the problems identified. Yet, UMTA has yet to issue new Buy America regulations in the year since enactment.

Are the transit agencies more in compliance? Probably not. I would venture to guess that if one were to do a spot check of the RFPs issued by the transit properties over the past twelve months, only a minority would reflect the new Buy America requirements.

To sum up, when one looks at past and recent performance, compliance with Buy America is, at the very least, inadequate.

IMPROVED ENFORCEMENT

Buy America, with a few strengthening provisions and with vigorous enforcement by UMTA and the transit agencies, can lead to a resurgence of domestic rail carbuilders and component suppliers.

Attached is a copy of a report in the January 1988, issue of Railway Age entitled "Passenger Car Market at a Glance." This forecasts orders from 20 American operating systems for approximately 1,390 to 1,500 new passenger cars.

In addition to those 20 systems that told Railway Age of their purchasing plans, there are 13 metropolitan areas where rail transit is at various stages of consideration or development. They are Austin, Dallas, and Houston, all in Texas; Columbus and Cincinnati in Ohio; Denver; Honolulu; Kansas City; Long Beach and Los Angeles in California; Minneapolis-St.Paul; Phoenix, and St. Louis. There are another 12 cities with existing and expanding rail passenger systems -- Atlanta, Cleveland, Detroit, Ft. Worth, Miami, New Orleans, Philadelphia, Pittsburgh, Portland, San Jose, Seattle, and Washington, D.C. Also not included in the Railway Age table are the new Viewliners that Amtrak will order when and if its funding can be worked out.

All of this leads us to believe that the potential market within the next five years is something like $2.5 billion.

How are we to understand the importance of $2.5 billion in expenditures for rail passenger cars to our economy? We apply multipliers, which are the subject of another exhibit attached to this statement.

We assert that if all $2.5 billion is spent within the U.S., we believe it will have an overall effect, through secondary and tertiary purchases of approximately $6.5 billion. We estimate the $2.5 billion, all spent in this country, would result in a year's employment for 106,500 persons.

What can Congress do to see the positive impact of this market accrues to Americans?

One way is to strengthen Buy America.

ENFORCEMENT

First, the new Buy America legislation has provisions which require that subcomponents be as strictly examined as components for American content. The goal is to thwart the situation whereby "American components" can be created from 100 percent foreign subassemblies, by putting them together into a final product at a U.S. location. Despite the positive legislative stance, the dismal record of compliance to date will require close Congressional oversight of these provisions. The UMTA regulations (when they are issued), the compliance system they establish, and the response of the major transit authorities should be scrutinized.

Second, Congress adopted a requirement for pre-award and post-delivery audits of procurements subject to Buy America. Just who will conduct these audits -- UMTA, the transit properties, or a third party - has not been determined. Whoever does it, these audits must be undertaken effectively, in an unbiased fashion. We urge Congress to query UMTA on this point and follow up by reviewing closely their proposed procedures.

Third, we strongly urge Congress to ask UMTA to establish an active, rather than a passive, posture for verifying compliance with its own regulations. Simply waiting for an aggrieved party to complain is not enough. UMTA should make spot checks of the transit properties' compliance and, in particular, should closely monitor all railcar, and all rail transit equipment procurements over $10-million to ensure Buy America compliance.

NEW LEGISLATION

In terms of a legislative agenda, we recommend that an enforceable schedule of penalties for non-compliance be developed, and enacted into law. The current legislation calls only for the Draconian measure of debarment from all federal procurements. This penalty is so severe that one would hesitate to enforce it in most cases. Thus we would recommend both a graduated series of penalties and a clear legislative requirement that the penalties be meted out when non-compliance is identified.

An example of an "intermediate" penalty might be a fine of 25 percent of the total value of the contract. This 25 percent equals the 25 percent cost differential referred by in the Surface Transportation Act to establish an automatic Buy America waiver. If it is determined that the product is not as claimed in the certification, the supplier should be forced to pay the 25 percent differential to both UMTA and the property in the same ratio as the original local/Federal support.

Alternatively, a company found non-compliant could be precluded from participating in any UMTA-funded program for a period of five years. This seems more realistic, and more enforceable, than a U.S. government-wide prohibition for a first-time offense. Of course, if continued non-compliance, or criminal malfeasance were detected, suitable penalties could and should be established, including U.S. government-wide debarment. Further, the transit agency should be penalized if it can be shown that it willfully encouraged, or participated in non-compliant activities. In short, Congress should establish a range of appropriate and enforceable penalties and then enact these into law.

Second, Congress should investigate the possibility of modifying the UMTA authorizing legislation to preclude a transit property from "segmenting" its funds, thereby avoiding compliance with all federal requirements. Currently, such segmentation is perfectly legal. By this we mean the procedure by which a city or transit authority separates contracts which utilize federal funds from those which it determines utilize solely state or locally generated funds. Thus a city building a rail system extension can buy railcars using state and local funds, and build tracks and stations using a combination of UMTA and non-federal funds, despite the fact the system could not be built without federal funds. Further, under current law, such a car procurement does not have to comply with the provisions of MBE, DBE, Buy America or any other federal requirements. While a transit authority may call for voluntary compliance in such instances (and some have done so), we feel that the Congress should evaluate whether or not the entire operation of a transit agency should be subject to Buy America.

We have attempted to explain, from the perspective of the rail transit industry, the limited success of Buy America over the past decade. We have pointed out its dismal failure in safeguarding the railcar manufacturing industry and a limited success in that portion of the industry devoted to components and sub-components. We have described why neither UMTA nor the transit agencies have had any real incentive to vigorously enforce Buy America, and never will unless Congress makes its concerns known and felt. Finally, we have made several administrative and regulatory suggestions which should work to improve compliance. The bottom line, however, lies with you in Congress. You have recognized the need for Buy America. We look for you to ensure that it works.

EXHIBIT

DOMESTIC PRACTICES AFFECTING U.S. PASSENGER RAILCAR MANUFACTURERS

Outside the scope of Buy America, we can isolate four domestic factors that crippled this U.S. industry.

First, American car builders were faced with contracts riddled with one-sided contractual terms and conditions. It seemed as if the consultants hired by the transit agencies vied with one another to see if they could develop more rigorous technical and financial conditions in each successive order. Contrary to the stated expectation, these terms did not produce better equipment, on a more timely basis, at a cheaper cost. The single clear result was to help drive the Americans out of the business or into bankruptcy. Only the foreigners seemed willing to agree to the terms, knowing that their own domestic markets would keep them afloat. And in the case of Atlanta's procurement, a French company was driven into reorganization. But another foreigner always appeared willing to step up to the plate.

Second, there was a lack of standardization. Each city demanded different cars and continued demanding different versions on successive orders, forcing the redesign of both cars and subsystems. New technologies were not introduced on an incremental basis; rather a complete "new" car was the normal procurement. This demand for a "new" product precluded economies of scale, increased engineering costs, and magnified technical risks, thereby destroying any advantage a U.S. manufacturer might achieve from selling a standarized product.

Third, the industry was plagued with labor problems. Saddled with antiquated labor relationships, and new Federal safety, minority hiring, and other government requirements, U.S. manufacturers faced massive resistance to more productive working methodologies. American car builders had to compete at a cost disadvantage. Ultimately, they had to leave the business. Transit America, which closed its doors last summer, is the latest case in point.

Fourth, management problems increased as the product became more complex; schedules, tighter; customer demands, heavier, and capital costs, greater.

EXHIBIT

GAUGING FOREIGN PURCHASES IMPACT ON THE U.S. ECONOMY

For this presentation, the RPI Committee on Passenger Transportation has sought up-to-date multiplers based upon the most recent input-output studies of the U.S. Department of Commerce.

However, we have been unsuccessful in attempting to quantify the number of jobs, and the lost secondary and tertiary purchases that result from transit authorities' buying railcars outside the Untied States. The 1982 input-output figures have not yet been published by the Commerce Department.

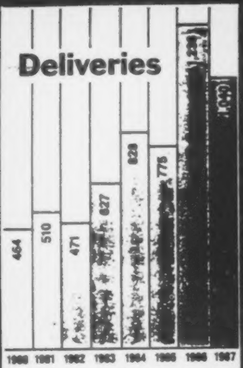
Consequently, we have reverted to a program we issued several years ago, calling for a balanced public transportation program for our country. Among papers we consulted was the Office of Technology Assessment's study, "Energy, the Economy, and Mass Transit," published in December of 1975.

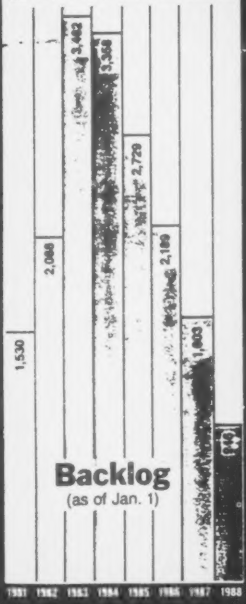
Based on our efforts to bring those figures forward in the 1980's, we concluded that every dollar spent on railcar manufacturing ultimately had a total overall impact on the economy of $2.60 and that a million dollars spent for railcars yielded 42.6 fulltime jobs for one year.

One may quarrel about whether an individual multiplier factor should be higher or lower, and by how much, but the basic point is unarguable. When we send our dollars out of the country to buy railcars, we are exporting employment -- the foregone domestic work in the railcar building industry and the ancillary domestic businesses -- as well as the goods and services that would have been purchased by their wage earners.

An article in The New York Times for April 21, 1988, cites a study by the Port Authority of New York and New Jersey of the effect of the expenditures of some $7.7 billion on rebuilding subway and commuter cars. That study showed the creation of 15,000 jobs and $12 billion in wages and business sales. No secondary or tertiary impacts were included, because the Port Authority wanted to be conservative.

Passenger-car market at a glance





These cars were delivered in 1987:

Purchaser	No. of cars	Type	Builder
Amtrak	2	Intercity prototypes	Budd, Amtrak
Atlanta	36	Rapid transit	Hitachi, C. Itoh
Baltimore (MARC)	13	Commuter	Nippon Sharyo, Sumitomo
Boston	40	Commuter	Bombardier
	34	Commuter	Messerschmitt-Bolkow-Blohm
	9	Light rail	Kinki Sharyo
	6	Rapid transit	UTDC, Inc.
Chicago (CTA)	36	Rapid transit	Transit America
NJ Transit Rail Operations	27	Commuter	Bombardier
New York (Metro-North)	54	Commuter	Mitsui, Tokyu Car
	28	Commuter	Bombardier
New York (NYCTA)	336	Rapid transit	Bombardier
	184	Rapid transit	Westinghouse/Amrail
PATH (PA of NY/NJ)	69	Rapid transit	Nissho Iwai, Kawasaki
Philadelphia (SEPTA)	36	Rapid transit	Bombardier
Pittsburgh (PAT)	1	Light rail	Siemens-Duewag
Sacramento	9	Light rail	Siemens-Duewag
San Francisco (BART)	5	Rapid transit	Soferval
San Francisco (CALTRANS)	2	Commuter	Nippon Sharyo, Sumitomo
Santa Clara County	32	Light rail	UTDC, Inc.
Toronto (TTC)	26	Rapid transit	UTDC Group
	5	Light rail	UTDC Group
Washington (WMATA)	52	Rapid transit	Breda
Total	1,040		

Work goes forward on this undelivered backlog:

Purchaser	No. of cars	Type	Builder
Alaska Railroad	8	Intercity	Daewoo
Amtrak	1	Intercity prototype	Budd, Amtrak
Boston	33	Commuter	Messerschmitt-Bolkow-Blohm
	41	Light rail	Kinki Sharyo
	52	Rapid transit	UTDC, Inc.
Los Angeles (LACTC)	54	Light rail	Nippon Sharyo
NJ Transit Rail Operations	13	Commuter	Bombardier
New York (NYCTA)	100	Rapid transit	Westinghouse/Amrail
	200	Rapid transit	Kawasaki
Philadelphia (SEPTA)	26	Light rail	Asea Traction-Amtrak
San Diego (MTDB)	20	Light rail	Siemens-Duewag
San Francisco (BART)	145	Rapid transit	Soferval
Santa Clara County	18	Light rail	UTDC, Inc.
Toronto (GO Transit)	63	Commuter	UTDC, Inc.
Toronto (TTC)	46	Light rail	UTDC Group
	94	Rapid transit	UTDC Group
Washington (WMATA)	32	Rapid transit	Breda
Total	946		

Orders likely to develop in 1988:

Purchaser	No. of cars	Type
Baltimore	35-40	Light rail
Boston	95-115	Commuter
Dallas (DART)	12	Light rail
Los Angeles (SCRTD)	30	Rapid transit
Montreal	24	Commuter
NJ Transit Rail Operations	40	Commuter
New York (LIRR)	12	Commuter
New York (NYCTA)	44	Rapid transit
Sacramento	6	Light rail
Toronto (GO Transit)	60	Commuter
Total	363-378	

The five year (1989-1993) outlook:

Purchaser	No. of cars	Type
Baltimore	40	Light rail
Baltimore (MARC)	30	Commuter
Boston	100	Rapid Transit
Buffalo (NFTA)	6	Lightrail
Calgary	14	Light rail
Chicago (CTA)	280-356	Rapid transit
Chicago (METRA)	116	Commuter
Dallas (DART)	12	Light rail
Los Angeles (LACTC)	30	Light rail
Los Angeles (SCRTD)	34-42	Rapid transit
NJ Transit Rail Operations	90-110	Commuter
New York (LIRR)	46	Commuter
New York (Metro-North)	60	Commuter
New York (NYCTA)	400*	Rapid transit
PATH (PA of NY/NJ)	29	Rapid transit
Portland (Tri-Met)	5-10	Light rail
Sacramento	12-25	Light rail
San Diego (MTDB)	15-20	Light rail
San Francisco (CALTRANS)	13	Commuter
San Francisco (MUNI)	24	Light rail
St. Louis	31	Light rail
Toronto (GO Transit)	42-60	Commuter
Toronto (TTC)	22-58	Rapid transit
Vancouver (BC Transit)	10-20	Light rail
Total	1461-1652	

* Annual 200 car procurements beginning in 1992.

Mr. OBERSTAR. Our next witnesses consist of a panel including: John Maile, National Sales Manager, Cold Spring Granite Company; Mr. Richard Scott Rinn, Vice President of Administration, Cold Spring Granite Company; and Mr. Ron Posthuma, Director of Government Relations, Seattle Metro.

Mr. Rinn, would you please identify your assistant, the attorney for Cold Spring Granite?

Ms. DEESE. Pamela Deese.

Mr. OBERSTAR. Pamela Deese. Thank you.

Would you all raise your right hands?

[Witnesses sworn.]

Mr. OBERSTAR. Thank you.

The focus of this panel is a different aspect of the Buy America legislation, and we are prepared to focus on a unique aspect that has most recently come to the subcommittee's attention.

To present the opening remarks we call on Mr. Maile of the Cold Spring Granite Company, or, Mr. Rinn, you are going to speak for the panel?

Mr. RINN. May I do so?

Mr. OBERSTAR. Fine.

TESTIMONY OF RICHARD SCOTT RINN, VICE PRESIDENT OF ADMINISTRATION, COLD SPRING GRANITE CO., ACCOMPANIED BY JOHN W. MAILE, NATIONAL SALES MANAGER, STRUCTURAL DIVISION, COLD SPRING GRANITE CO.; AND PAMELA M. DEESE, ATTORNEY, ROBINS, ZELLE, LARSON & KAPLAN; AND RON POSTHUMA, MANAGER, GOVERNMENT RELATIONS, SEATTLE METRO

Mr. RINN. Good afternoon, Mr. Chairman, Congressman Clinger. My name is Scott Rinn. I am Vice President for Administration for the Cold Spring Granite Company. I would like to thank you for the opportunity to testify today. I would also like to thank Congressman Stangeland for his opening remarks.

With me today is John Maile, Manager of National Sales for Cold Spring Granite Company, and to my far left is Pamela Deese, our outside counsel.

If I may, at this time I would like to request that the statement that we submitted earlier be made part of the record.

Mr. OBERSTAR. Your statement will be included in the record in full, and you may proceed to summarize your remarks.

Mr. RINN. Thank you.

I would like to tell you just a little bit about Cold Spring Granite and a little bit about our industry for just a couple of minutes and then turn this over to Mr. Maile to talk about the cases in Seattle.

Cold Spring Granite is the largest fabricator and quarrier of structural granite in North America. We operate four fabrication facilities in over 30 quarries in seven States and Canada. We are celebrating our 90th year in business this year and are a major employer in central Minnesota, employing over 1,600 people.

We as a company have had previous experience in working on mass transit projects. We participated in the BART system in San Francisco, MARTA in Atlanta, and in addition to those the Chicago and Miami mass transit systems.

Our expertise in the area of structural granite is widely known and respected throughout the country. To our sales staff to our estimators, our drafters, our manufacturing group and the men who work in the quarries, we are dedicated to a quality product and to a quality program that says that we should make our product right the first time. That is a simple idea that has a profound impact on the cost of running our business.

We took this expertise into the projects in Seattle and were called early on in the early stages to assist the architects in the development of the project. I am going to ask John Maile in just a minute to tell you the details of that, but I want to mention one other thing before doing so, and that is a little bit about the status of what's going on in our industry right now.

Over the last three years we have been for the most part unable to make a profit in the structural business in granite because of low-priced imports from primarily Italy and Spain. We believe that we have the most modern fabricating equipment in the world, just as our competitors do, and we have a dedicated labor force. We believe that our inability to compete is based upon pricing that is below cost of production from the Italian and Spanish firms as well as, or in lieu of that, subsidy programs.

We have filed, approximately eight months ago, a trade action, antidumping and countervailing duty petition, and asked the International Trade Commission and Commerce Department to investigate whether that is true or not, and within the next couple of months we should have an answer.

Mr. MAILE. Good afternoon, Mr. Chairman, and members of the subcommittee. My name is John Maile. I am the National Sales Manager in our structural granite division. I have been in various departments of Cold Spring Granite Company for 28 years. In those capacities I have been responsible for some of the largest projects our company has sold, including transportation projects. I began working with architects in the firm of Parsons, Brinkerhoff, Quade and Douglas, and the Richardson Associates in June 1985 to prepare the plans and specifications for the city of Seattle transit projects.

I was first contacted by the architects to prepare a presentation on the use of granite in the transit stations. From June 1985 until July 1987 I worked closely with the architects as well as the artist, Vicki Scuri, who had been commissioned by Seattle Metro to design several mosaics for the projects. To this day, the plans and specifications reflect my proposal for the support system to be used to install the granite.

My role was also to provide many different granite samples and various finishes to educate the architects and artist. The plans and specifications initially included quite a few Cold Spring granites. The first station to be bid by Seattle was the Westlake station. The plans and specifications for this project indicated that Buy America would not apply to the granite portion of the project. This fact was repeated at a prebid meeting by a Mr. Khazak of Seattle Metro.

The Seattle Metro authorities relied on an opinion from Edward Gill of the Urban Mass Transportation Administration which found that structural granite was a mined product specifically excluded from Buy America.

We disagreed with this opinion because structural granite clearly is a manufactured product.

Mr. Gill did change his original opinion on the application of Buy America, but not until two days after bids were accepted by Seattle on the West Lake station. The bid was awarded to the low bidder, who intends to use an Italian manufacturer.

On July 2, 1987, a second transit project, which I shall refer to as the "tri-station project," was bid for general bid. Of the 13 granites bid by Cold Spring, only one was a foreign stone, from South America. The general bid covered the entire transit station, and the bids ranged from $89.5 million to $104 million. The granite portion of the bid was less than four percent, however. Due to cost overruns in the general bid, all bids were rejected, and the Seattle Metro ordered extensive cost-reduction design changes.

I continued to work with the architects on detailing, color, and finishing cost reductions. At some point between July and December 1987, Seattle Metro decided to separate the granite from the general rebid. In my experience, this decision was very unusual.

In retrospect, I believe the decision to bid granite separately was calculated to utilize the 25 percent waiver under Buy America. On the general contracts, it would have been nearly impossible for a foreign bid to be 25 percent less than a domestic bid. But by separating granite from the general bid, the 25 percent differential would be more likely.

In all my discussion with Seattle Metro architects during this period, the issue of price prevailed. On December 7, 1987, the bid for the granite procurement on the tri-station project was published. The bid documents separated the granite into two sections: one for stone veneer and the other for stone pavers and flooring. The majority of the granite for the transit stations will be applied to the floor.

Within each of the two sections of the contract there were eight groups of granite. Each group permitted a choice of one to as many as four different types of granite. Therefore, there were a total of 16 groups of granite, five groups did not offer at least one American granite.

Though Cold Spring Granite ordinarily can purchase granite from any quarry in the world, the current antidumping and countervailing duty actions against Italy made it impossible to purchase granites specified in the contract from Italy.

Additionally, I informed Seattle Metro of our difficulty in obtaining Italian granite which had been specified in two of the 16 groups. The contract called for a speckled granite for a veneer or wall application and for a floor application. The three types of speckled granite specified in the contract were all from Italy, are known as Ghindone, Rosa Beta, and Rosa Antico. I would like to submit these samples for the record.

[Pause.]

Mr. MAILE. It was our opinion that none of these stones was available in sufficient quantities to us to be a reliable source for this contract. Additionally, in attempting to find a source for the granite, we were unsuccessful.

With this in mind, I filed a request to substitute a very popular domestic granite for the speckled granite specified in the contract.

My request to substitute Deer Island granite for Ghindone was filed on December 28, 1987. I would like to submit Deer Island for the record.

[Pause.]

Mr. Maile. The substitution request included the three samples required by the bid document as well as supporting documentation pertaining to the strength of the stone and its applications in other domestic transit projects. This was the only request for substitution made by us, although there were three other groups of granite which did not contain an American stone.

It was not until January 20 that our substitution request was denied at the same time 18 foreign granites were approved as substitutes. We were left with only three working days to try to propose another substitute, which was impossible.

During the interim period, Seattle Metro attempted to obtain a public-interest waiver of the Buy America requirements. On December 28, 1987, Mr. Pelton of Seattle Metro invited all prospective bidders to submit comments by January 6 on a public-interest waiver.

Our comments in opposition to a waiver of Buy America were submitted on January 4, 1988. A public-interest waiver requested from Seattle Metro dated January 7 was filed with UMTA. Though we had submitted comments in opposition to a public-interest waiver, our comments were not forwarded to UMTA with those in support of such a waiver.

Immediately upon learning of our rejected substitution request, I filed a protest with Seattle Metro. My protest was rejected the following day, on January 21, 1988. I did not receive the rejection until January 25, however.

The reasons articulated for the rejection were clearly artistic. The Deer Island substitute met all the engineering specifications of the contract, though one of the Italian granites specified by the bid apparently does not.

Additionally, it is my understanding that requests for substitutions from foreign suppliers were not accompanied by the supporting data required in the bid. We believe it to be very unfair and discriminatory for Seattle Metro to establish grossly different standards for foreign suppliers desiring to participate in the bid.

Bid day was January 26, 1988. We submitted our bid using the Deer Island granite in place of the specified Italian speckled granites. Only two other bids were submitted to Seattle Metro.

Though bidders were required under the terms of the bid documents to have bid security, neither of these two companies have the proper bid bond. Nonetheless, Seattle Metro permitted them to submit their bids. Because the bids were opened publicly, all other bidders were aware of our bid of $2.5 million, which was within Seattle Metro's engineer's estimate of $2.6 million to $2.8 million for this procurement.

Seattle Metro subsequently rejected all three bids. Our bid was rejected as nonresponsive because we bid Deer Island granite, which was not an approved substitute. We filed a protest appeal with Seattle on February 3, 1988. This appeal was filed after we spoke with Mr. Gill at UMTA to advise him of Seattle's actions on this procurement.

Our appeal requested a review of Deer Island as a substitute, stating that a substitute cannot be rejected for other than transit-related reasons. We also alleged that the bid specifications were exclusionary and discriminatory.

The appeal was denied on February 4. In denying our appeal, Seattle Metro stated that, "The architecture of a transit station is clearly transit-related." Of the approximately 23,000 square feet of speckled granite specified in the contract, 17,500 square feet were for the floor in one of the three stations. It is difficult to believe that the "warm and lively" atmosphere mentioned by Seattle Metro as a reason for rejecting Deer Island would be jeopardized by the selection of a very similar-appearing granite in a flooring application.

Moreover, the remaining 5,600 square feet of speckled granite was to be used in a wall mosaic with red and black granite. Each of the red and black categories permitted bidding on three different types of granite. Altogether there were 27 combinations of granite available using one red, one black, and one speckled. Yet, Seattle Metro rejected Deer Island because it did not look well with the red and black granite that they had specified.

The fact is that Seattle Metro could not have known which three granites were going to be bid in combination with any other granite by the bidders.

The tri-station project was rebid by Seattle Metro on February 9, 1988. We resubmitted our bid of January 26 which still included Deer Island. Three other companies submitted bids. The bid was awarded to Carlo Mariotti, an Italian manufacturer who submitted the second lowest bid. Our bid was rejected as nonresponsive for having bid Deer Island.

We filed an appeal with UMTA and its regional authorities in objection to Seattle Metro's actions which denied Deer Island as a suitable substitute. The bid protest was denied on March 17. UMTA refused to review our protest because of our failure to allege a clear violation of law.

We continue to believe that the circumvention of Buy America is a violation of the law. Moreover, it is our understanding that Seattle Metro spoke with Mr. Gill before the protest was denied concerning the effect of a nonresponsive bid designation on their ability to buy Italian granite. Seattle Metro apparently also spoke with Mr. Gill about a price-differential waiver, which he told them would only apply if our bid was considered responsive.

These facts, taken together, lead us to conclude that Seattle Metro knowingly specified Italian granite which a domestic manufacturer could not provide. Seattle Metro refused to permit a domestic granite substitute because ridership could be enhanced by the use of a speckled Italian granite in a single station.

Finally, while Mr. Gill provided useful suggestions and expressed frustration at Seattle Metro's actions, UMTA failed to take any action to prevent the circumvention of Buy America.

I would welcome the opportunity to respond to any questions you may have. Thank you.

Mr. OBERSTAR. Thank you very much. I appreciate your remarks, and we will come back to you for some questions after we have heard from Mr. Posthuma.

Mr. Posthuma?

Mr. POSTHUMA. Thank you, Mr. Chairman.

I am Ron Posthuma, Government Relations Manager, Seattle Metro. I have submitted also a statement of some length. I wonder if that could be submitted for the record as well and then I will summarize it briefly.

Mr. OBERSTAR. Your complete statement will be included in the record.

Mr. POSTHUMA. Thank you.

Let me give you a little bit of background about my organization as well. Metro is a large organization that is a special district serving the citizens of King County in Washington State. We are a transit operator. We are also a sewage treatment operator. We have a very large capital program in both of these areas. We have a large procurement staff. We have a large construction contracting staff.

We are not particularly expert, as these gentlemen to my left are, in granite tile. That is not a common item for us. We did, however, contract with engineering firms, architectural firms, and a local artist to try to get some professional judgment and expertise in that area.

We are conducting a major construction project in downtown Seattle. We are building a transit tunnel there under a full-funding contract with the Urban Mass Transportation Administration. That contract is called a full-funding contract. It is a contract that provides up to a certain amount of Federal dollars if we can complete the project on time and meet all applicable Federal requirements. Any cost overruns are to be locally financed. So, we have a clear incentive to try to hold down costs under that contract.

Turning to the question of what our philosophy is towards Buy America, Metro's policy on domestic preference and competitive bidding is to comply with Federal requirements on Federally financed projects in the least costly manner legally available to us.

We do have a responsibility to our local taxpayers to try to get the job done as cheaply as possible. But we also acknowledge that when we accept Federal grants, we have a responsibility to comply with the Federal policy on domestic preference because that is a policy this Congress has enacted, and we recognize that is something we also need to comply with.

We strive to meet these twin goals that I think you mentioned already, Mr. Chairman, by encouraging several bids in each procurement and then by fully informing prospective bidders of the applicable requirements of all Federal requirements, including the Buy America provisions, and we attempted as best we could to do that in the case of granite tile.

Turning to the four actual occasions on which we attempted to procure granite, I would not disagree too much with the gentleman who spoke earlier about the sequence of events. I think the interpretation is probably fairly different, but in fact we did in the Westlake contract initially indicate to people that Buy America would not apply to granite tile. It was our understanding, on consultation with UMTA, that if granite was a mined product, that Buy America did not apply, only if it was a manufactured product. Since we had a ruling or an interpretation that it was a mined product, we so informed our bidders, and they bid accordingly. That was the Westlake contract situation.

In the case of the tri-station contract, which for us is the number three contract in this project, we adopted basically the same approach towards contracting as in the first go-around. We looked to general construction contractors to be the procurers and installers of the granite tile for us. We got very high bids, as the gentleman indicated, and decided on the basis of those high bids to do a value engineering exercise and to rebid the work.

In asking the general contractors why the bids were so high, much higher than engineer's estimate, one of the areas they identified was the granite tile, the fact that their expertise was in heavy construction, excavation, those kinds of areas. The kinds of contractors who were bidding this work were Guy Atkinson out of San Francisco, Peter Kiewit, people who do not generally deal, I take it, with granite tile because they are building structures and digging dirt.

They told us that they, as a result, added to their bids in this area because of their unfamiliarity. That is the basic reason, value engineering, that we decided to draw this particular procurement out and focus the work on actual granite tile suppliers because then we would have people who actually knew what they were doing, providing the product, and we hoped in that way to get a better price.

In the redesign and in the preparation for the separate granite procurement contract, we did try to simplify the design and we did get good assistance from Cold Spring in these efforts. We also tried to maintain a multiplicity of source, and we added a preaward substitution process. In the earlier bids we had specified a number of tiles and said that bidders were welcome to try to substitute "or equals" after award. It was pretty clear that people did not want to take the risk of an after-award "or equal" substitution, since we could hold them to their original product. So, we added this preaward substitution mechanism.

We also had received comment from several bidders that our original specifications were, if not exclusionary, at least heavily slanted towards the Cold Spring Company, and I think that may not have been intentional. Cold Spring is, as the gentleman indicated, the largest supplier of granite tile in North America, and when we looked at what kinds of tiles to be specifying, their name shows up in very many categories as the only preapproved product, preapproved source.

So, we did get a lot of criticism for that from other tile manufacturers, both domestic and foreign, and in the redesign effort we did try to open up the specification both with this preaward substitution process and in the specific tiles that we were identifying.

We got bids on this contract, the granite procurement contract, in January of 1988. The Cold Spring bid was nonresponsive. It was nonresponsive not only because of the company's failure to submit an appropriately colored tile, they also chose to change the quantities we had asked for. That is a de facto prima facie case for rejecting the bid. In other words, we asked for a certain quantity of tile, and if the particular bidder bids a different quantity of tile, we have no ability then to compare their bids with the other bids. We did not ask for more tile when the bid was changed to give us more. We had to reject that bid in terms of that being a nonresponsive bid.

We rebid the effort on a very short timeframe because we needed this tile to fit in with the actual station construction work. We wanted to see if we could get that tile procurement resolved so that the major construction contractors would know who they were going to deal with.

If I could turn to the issue of the waiver request. We knew in 1987 that we were likely to receive granite tile supply bids from both domestic and foreign manufacturers. Consequently, I contacted UMTA chief counsel's office in D.C. to confirm what I understood to be the Buy America provisions. Both the former UMTA chief counsel Joseph LaSalla and his deputy Ed Gill told me that UMTA would not approve a Buy America public-interest waiver in this case. They indicated that since the domestic manufacturer was available, the only potential grounds for a waiver would be a cost differential of 25 percent or greater in actual bids received, and they encouraged Metro to actually put the work out for competitive bid and see who won.

I briefed our senior management on this guidance from UMTA. Since we knew that Cold Spring was interested in this contract and we had no questions about their ability to perform the work, supply a good product, and do so in a timely manner, we proceeded on the assumption that the Number (3)(c) contract, the separate granite procurement contract, would go to Cold Spring if their bid was within 25 percent of their foreign competitors.

Our concern over timely delivery of this rebid procurement was paramount. We did have concerns over cost of granite, but we had perhaps greater concerns over potential cost exposure in this larger station contract which was also coming up if we had a poorly performing granite supplier or if we got a slow response from UMTA on a waiver request. So, the cost consideration was cutting in a couple of different ways there.

On February 25 I wrote to UMTA's regional office and requested a Buy America waiver on grounds of no available domestic manufacturer. By this time I had learned of the International Trade Commission imposition of countervailing duties on the Italian granite tile suppliers. While I had not seen the actually ruling, I understood that the duties were in the range of eight percent. We viewed, given the way we had requested bids to be submitted, that the duties would be a responsibility of the contractor and not ours.

In any event, the bid of Carlo Mariotti appeared to be within 25 percent, to meet the 25 percent differential rule even if the duties were added.

The nonavailability of domestic manufacturer grounds appeared to be the most straightforward, so I submitted the waiver request on that basis.

If I could turn now to the issue of the color substitutions. As I said earlier, we have contracted with artists, with architects, and with an engineering firm who we think have some sense of interior design. When it came to the question of color suitability, we believe that those questions should be resolved at least initially by the professional architects and artists who design the station finished pattern. Their professional judgment was deemed the most appropriate means in terms of a contracting sense as well as an aesthetic sense of determining whether a particular color substitute would seriously undermine the effect of the overall design pattern.

We needed to have some agreed-upon standard methodology for determining which of the substitutes in the preaward phase would be allowed and disallowed. And so we turned to the people who had done the original design and asked them to make the judgment. In making those judgments, cost was not a criteria. They did not know what any of the bids would be at that point. And so their judgment was not based on price.

The artist who was most involved and whom your staff interviewed out in Seattle a few weeks ago was Ms. Vicki Scuri. I asked her last week about her review of the color substitutes at the University Street station. She indicated that about 10,000 square feet of concrete surface had been added to station finishes in lieu of more expensive materials during the redesign effort.

Consequently, she was concerned that color substitutes in the granite tile area that failed to provide a good contrast to granite would definitely undermine their concept for what that station was going to do. She did not want tiles that looked like concrete, basically, because that was going to end up blending the whole station into a concrete box as opposed to something that she had worked on the design of.

She emphasized in that same context the importance of each of the four distinct colors in the speckled tile maintaining their distinction when they were viewed from a distance; 15 feet in particular because that is where we will have a lot of people going by in the bus away from the station wall.

She did emphasize emphatically that she did not attempt to exclude any bidder during either the predesign, the redesign, or the color substitution process.

It is our contention—it was our understanding and has been an understanding that we have attempted to confirm, although we did not have much knowledge of this at the time—that Cold Spring could in fact buy an appropriate speckled tile from Italian quarries. We are not experts in the granite supply business. We don't know for sure where people get their tile.

It was hard for us to believe the contention that Cold Spring could not get this one particular shade from Italian quarries. And we have attempted, in preparation for this hearing, to verify our understanding. We have had many people tell us that in fact the Rosa Beta stone is an open-market stone, that if people want it, they can buy that stone on the open market. It was not a major cost driver in this procurement, particularly the area where the substitution was requested, which was in the granite veneer. On that basis, we did not understand this to be a do-or-die issue in terms of this procurement.

I know you have a lot of tiles up there, Mr. Chairman. We can debate the aesthetics of this. We do not think that these design judgments should be viewed as trivial. We have to realize that thousands of people each day are going to be exposed to these colors. These granite tiles will last for decades. They may not have a big impact on ridership, but we do think that it's important that we have as attractive a station as we can get in the public places that people want to go.

Just in summary, I believe Metro followed the Buy America requirements when it procured granite for the station finishes in the downtown Seattle transit project. We did not attempt to exclude any qualified bidders. We assumed the Cold Spring Granite Company would submit a responsive bid and that we would award to that company if they did, particularly in light of their excellent reputation for ontime, quality workmanship.

I would be happy to answer any questions you may have.

Mr. OBERSTAR. Thank you, Mr. Posthuma.

The Chair would like to note for the record at this point the presence in our hearing room of members of the Board of Directors of the Unilec REA Cooperative, of DuBois, Pennsylvania, constituents of the senior Republican member of the committee, Mr. Clinger, who is a longtime advocate of REA programs.

I would like to welcome the members here to another typically American institution, committees of Congress and the oversight process.

Mr. Posthuma, has Seattle Metro had any other experience with Buy America?

Mr. POSTHUMA. We have had Buy America experience, particularly in the area of bus procurements. We have also had other Buy America experiences in the tunnel construction effort. We have, for instance, procured elevators and escalators separately from larger general contracts and then assigned those. And that work did go to an American firm in competitive bidding.

Mr. OBERSTAR. Did you ever seek waivers on any of those bids?

Mr. POSTHUMA. We sought a public-interest waiver on the elevator and escalator work.

Mr. OBERSTAR. And did that ultimately go to a foreign supplier?

Mr. POSTHUMA. No, it went to a domestic supplier who submitted the lowest bid. We also did not get a public-interest waiver from UMTA, even though we asked for one.

Mr. OBERSTAR. So, on several other occasions you have had experience with the Buy America provisions, and the result has been that American product has been supplied in the bid process?

Mr. POSTHUMA. That's true in the case of the elevator/escalator contract. That's part of this tunnel construction effort. It's also true in terms of porcelain tiles that are also being used for station finish in this project.

Mr. OBERSTAR. Porcelain tiles, were those also ultimately American product, or did those go foreign?

Mr. POSTHUMA. They're being produced by an American manufacturer.

Mr. OBERSTAR. Were there aesthetic considerations involved in the porcelain tiles?

Mr. POSTHUMA. There were aesthetic considerations. It was a specific mosaic design. So, yes, I mean there were clear aesthetic considerations there.

Mr. OBERSTAR. But you did not need to seek for any particular purpose foreign supply for that product; is that right?

Mr. POSTHUMA. Well, we didn't consciously seek foreign supply for granite tile either. We wanted to maintain open competition, which we did in both those situations. We looked for bids from both domestic and foreign manufacturers in both cases.

Mr. OBERSTAR. We will come back to that in a moment.

You referenced at one point in your testimony the high cost of initial bid with respect to granite. Your statement was incomplete in making that remark. I would like to give you the opportunity to expand upon it. By "high cost," high cost of installation? High cost of product? Or do you mean both?

Mr. POSTHUMA. I might have misstated that. High costs in the Number (3) contract, the initial tri-station contract, was the overall bid for the station construction and finish. It was an almost $100 million contract, and we had estimated it more in the low eighties. So, it came in well over estimate and because of the high bid on the Number (3) tri-station contract we chose to reject all bids and rebid that work. It is at that point that we separated out the granite tile.

Mr. OBERSTAR. But on a $100 million contract, granite would have amounted to about two percent of the contract value?

Mr. POSTHUMA. Yes. It was not a large cost item. We did have general contractors tell us that their markups on that particular item were large because of their lack of familiarity with that kind of work.

Mr. OBERSTAR. With installation?

Mr. POSTHUMA. No, actually with the procurement of the tile, that they in fact did not—they're not familiar with that area, they didn't know for sure who they should be working with, and that they consequently marked that up 25, 50 percent because that's not the kind of work they usually do.

Mr. OBERSTAR. At that point in the bid process when the initial bid was rejected, had you listed options on the color and type of tile?

Mr. POSTHUMA. We had put in deletable alternatives in certain areas as a means of trying to control costs, and station finishes was one of those areas where we could in fact ask for changes after the bids were opened.

What we learned in that process and what we were told by contractors is that the specific amounts that they put in those deletable alternatives were not the true costs in terms of their bid; they put a lot of the price into the general part of the bid because if they got the contract they didn't want to be in a position where they reduced their profit margin because we exercised the option.

Mr. OBERSTAR. But was the Italian granite a part of that original IFB?

Mr. POSTHUMA. We had in that request for proposal specified a number of sources. There was a lot of Cold Spring product and some Italian product. And in terms of which product various bidders were supplying, I am not that familiar with the details.

Mr. OBERSTAR. Were the specifications tightened after you separated the granite part of the project?

Mr. POSTHUMA. Yes, it was. We went to fewer shades of tile, standardization in terms of tile shape, and this preaward substitution process. So, we did try to tighten the specification in a way that would———

Mr. OBERSTAR. And is that the point at which aesthetic considerations entered into it? Had you already consulted with UMTA, at that point, about the Buy America provisions and waivers?

Mr. POSTHUMA. Well, we consulted with UMTA in the summer of 1987—I did. Our architects and engineers were approached in the redesign effort, I believe, more from the standpoint of wanting to maintain a range of color options in terms of which actual source of stone, but to reduce the number of shades.

So, I mean I had talked to UMTA people about what the provisions were.

Mr. OBERSTAR. You received guidance from UMTA, you said, on the waiver issue. Did you get guidance from UMTA on compliance with Buy America?

Mr. POSTHUMA. Yes.

Mr. OBERSTAR. Did someone in UMTA make it clear to you that this procurement would be covered by Buy America?

Mr. POSTHUMA. Yes. For instance, they said specifically, "Don't ask for a public-interest waiver. There aren't any grounds for a public-interest waiver, and you shouldn't expect to receive one. You should in fact put this work out to bid."

Mr. OBERSTAR. You used the word "domestic preference" in referring to Buy America. Is that the language that UMTA uses in conversing with your agency?

Mr. POSTHUMA. I was actually taking that language from the letter the subcommittee sent in inviting my testimony. UMTA uses the word "Buy America."

Mr. OBERSTAR. In some instances Metro appears to be very flexible. Metro abandoned the aesthetically more pleasing waterjet finish on the request of foreign suppliers who complained that it provided an advantage to Cold Spring and, in consequence of that, offered flexibility in providing substitutions for various specified granites.

But on the other hand, when it came time to consider the only substitute from the only American manufacturer, Cold Spring, who was proposing to substitute Deer Island for Ghindone—which is the proper pronunciation of that word in the Italian language, I being an enthusiast—at that point Metro became inflexible.

Now, I have to believe that there is more involved than aesthetics in the decision. I think it would be naive on the part of the subcommittee to assume that only aesthetics determined the selection of granite tile, 70 percent or more of which is to be used for the walkway, and especially in view of the fact that you are, as all local transit agencies are, under pressure on costs. You have to lower your costs. You have to keep that down.

I cannot conceive of a situation where you would have gone to an aesthetically more pleasing product that would have cost a whole lot more just because it's better to look at.

So, cost was—or, I think, should have been—a very significant factor. That would mean that Metro would finally get what it wanted on two different occasions; that is, a waiver of the Buy America. I don't think it's unreasonable to conclude that at least one of the reasons for your substitution, one of your reasons for rejecting the Cold Spring substitution, was that it would have cost Metro more.

Mr. **Posthuma**. Mr. Chairman, at the time we made that decision on the Deer Island color substitution, we didn't know what people's bids would be. So, I can't see how cost enters in unless you presume that the domestic manufacturer was going to be more expensive.

Mr. **Oberstar**. I think it was generally known, because it's known within the industry, that the Italian product is substantially lower in cost because of subsidies offered by the Italian Government for the export of that product.

Mr. **Posthuma**. If that is the case, then there is the ability, we felt, on the part of Cold Spring to obtain that cheaper stone in block form and bring it in and manufacture it in the United States.

Mr. **Oberstar**. Well, the purpose of Buy America is not to make it advantageous for American companies to simply go overseas and buy a product that is cheaper and bring it here. We want to use product produced in the United States.

Mr. **Posthuma**. Well, as I tried to point out earlier, our knowledge of the tile industry is not extensive. We don't know where stone comes from specifically. When we do specify, we do attempt to get by name, by trade name and supplier so that we can at least track and hold people to their samples. But in terms of where the products comes from, our knowledge of that is not great.

Mr. **Oberstar**. Mr. Rinn, let me give you an opportunity to respond.

Mr. **Rinn**. Thank you.

I just wanted to point out and maybe offer a little broader perspective as we go through the detail that at the beginning of the project Cold Spring did inform Seattle Metro that a trade action had been filed. I believe that was in the fall of 1987.

Mr. **Maile**. September.

Mr. **Rinn**. September of 1987.

Believe me, throughout the trade action, Cold Spring has been unable to acquire Italian stone. Again, I would tell you exactly—or, I can't prove that, but believe me, we have tried to do that, and we cannot get Italian stone since we filed this trade action.

But during the course of this project as it went along, Seattle Metro was aware that the trade action was ongoing, as we explained, and prior to letting the bids the Department of Commerce had imposed on a preliminary basis penalty duties on Italian-manufactured granite products ranging from 5.87 percent to 12.59 percent. This was on the public record prior to the award of the bids.

The bottom line of all of this is that Seattle Metro knowingly purchased dumped granite, and one arm of the Government says that's not okay and the other arm said it was. It's not a good situation.

Mr. **Oberstar**. Thank you very much. I will come back to that point later.

The Chair will recognize the gentleman from Pennsylvania. Mr. Clinger?

Mr. **Clinger**. Thank you very much, Mr. Chairman.

Following up on the chairman's questions, what is the status of your trade action at the present time, Mr. Rinn?

Mr. **Rinn**. The International Trade Commission has preliminarily found that the domestic granite industry has been injured by imports of defined granite from Italy and Spain. The Commerce Department has preliminarily found dumping margins ranging up to 12.59 percent for companies from both Italy and Spain.

We are in the final leg of this trade action, and within two months final determinations will be made on both the injury on penalty duty and countervailing duty side.

Mr. CLINGER. Is it your position that because of your involvement in this trade action, you are being, in effect, punished by being denied access to any Italian granite?

Mr. RINN. Yes. We have tried to acquire some stone from overseas, and funny things happen to it. It just never shows up.

Mr. CLINGER. Prior to the institution of the trade action, did you have occasion to purchase foreign stone?

Mr. RINN. Well, we never have done it much, and I am not familiar, really, with what—I mean, there would be no reason not to supply it prior to that. But we are having difficulty now.

Mr. CLINGER. So, you attribute your inability to obtain foreign granite directly to the trade action?

Mr. RINN. Yes, I do.

Mr. CLINGER. Mr. Posthuma, you indicated that after bids for construction of the three stations came too high you then, as I understand it, separated granite bid from the main contract. I also understand that various parties within both Metro and the project architect's office talked to numerous granite suppliers in an attempt to interest them in bidding on the project.

Did any domestic companies other than Cold Spring express an interest in bidding on the project and, if not, did they supply any reasons for their nonparticipation in the project?

Mr. POSTHUMA. I frankly can't answer that question. We did have throughout this process other domestic manufacturers interested. We, however, were informed by many of them that the size of the work was difficult for a lot of domestic manufacturers to handle and that they would have to purchase stone from Cold Spring because Cold Spring is so repletely named throughout specification that they would be at a competitive disadvantage with Cold Spring if they did that. Since they would have to buy from their quarries, they felt they would have to pay a higher price.

So, we did have some interest from other domestic manufacturers. I am not sure exactly when they decided to drop out of the bidding process on that separate contract.

Mr. CLINGER. But it was your belief that the reason that they did not go forward in the process was because they would have to obtain from Cold Spring?

Mr. POSTHUMA. The supply of the stone. Correct, sir.

Mr. CLINGER. Prior to the separation of the granite from the main contract, was there any discussion—forgive me if it has been covered before—but was there any discussion with the UMTA regional office, perhaps during one of the quarterly review sessions, as to whether a separate granite bid would make it easier to obtain a waiver of the Buy America provision based on the 25-percent cost differential?

Mr. POSTHUMA. I don't recall any conversations with the UMTA regional office along those lines.

Mr. **Clinger**. Nothing to do with cost or what effect the separation would have on the ability to obtain a cost waiver?

Mr. **Posthuma**. They were very interested in the value engineering exercise and to the extent that separating out this procurement was a means of reducing the cost for granite, they had that interest. I don't recall us discussing that with the regional office in terms of the Buy America provision.

Frankly, we viewed guidance coming from Washington, D.C., as more dispositive on Buy America issues because that's where the expertise on that subject resides within the agency.

Mr. **Clinger**. On December 21 of last year Alan Pelton, who was the Purchasing Buyer for Metro, sent a letter to prospective bidders requesting comments with regard to obtaining a public-interest waiver of Buy America. I understand that on January 7 of this year Jane Elder Bogel, Grants Administrator, formally requested such a waiver. Included in the waiver request were comments from four foreign bidders. The request also noted that the bid date was on January 26 and that a reply was needed before that time.

How did it happen that this request was made after UMTA had already advised you that a public-interest waiver would not be approved?

Mr. **Posthuma**. Well, frankly, Congressman, that was a mistake. It was done by people, you know, at the lowest levels of our organization, and it shouldn't have happened. Our senior staff——

Mr. **Clinger**. So, it wasn't deliberate? You're saying that it was purely happenstance?

Mr. **Posthuma**. I think what happened was we had our purchaser receive requests. He viewed it to be a ministerial passthrough of just putting that request through to UMTA to see what would happen. We did not attempt in any way to substantiate in those letters, a rationale for public interest. If the senior management had known about those letters, the letters would not have gone out.

When I found out about them, I immediately called Ed Gill and told him to disregard them because I knew that that was not the guidance we had from UMTA on how to proceed with this procurement.

Mr. **Clinger**. It did suggest a sort of schizophrenia within the Metro organization, did it not?

Mr. **Posthuma**. Well, I did say it was a large organization.

Mr. **Clinger**. With the January 7, 1988, letter requesting the public-interest waiver, you forwarded all the positive comments from the foreign bidders but Cold Spring's comments which clearly opposed the waiver were not included. Why would you not have included the Cold Spring comments along with the comments of the foreign bidders?

Mr. **Posthuma**. Congressman, I am not sure why we sent the letter in the first place. So, it's hard for me to say why we only sent some of the attachments.

Mr. **Clinger**. So, you did not know that. But it would seem clear to me that by excluding Cold Spring's comments, it was giving a somewhat distorted or at least a biased view of the situation.

Mr. **Posthuma**. Well, my recollection of those attachments, they didn't say much either other than, "Please give us the public-interest waiver." I mean, in looking retrospectively at that request, there was no rationale developed, and there was, therefore, I don't think, any expectation that there would be positive action on the request. I think it was a mistake that it was sent in.

Mr. CLINGER. As I understand it, Seattle Metro made the decision to use a prebid substitution process for the rebid on the granite. What was the reason for the decision to use that process?

Mr. POSTHUMA. We had received comments from the Cold Spring Company and others that given the range of shades and tiles that we were specifying, while we did try to specify more than one source in each instance in our original specification, that it would make some sense to have a preaward substitution process because if people did have acceptable product and they could get it approved prior to submitting bids. They then could submit lower bids basically because they wouldn't have to live with the uncertainty of a postaward approval of their substitute.

Mr. CLINGER. Were there any written criteria as to what would constitute acceptance or rejection of substitutes? In other words, was there any guidance to the bidders on what would be acceptable or not acceptable as substitutes?

Mr. POSTHUMA. My recollection is that they had to meet the same basic criteria as originally specified stones.

Mr. CLINGER. Who would have had the ultimate authority to accept or reject the substitutes?

Mr. POSTHUMA. Well, ultimately, it's our executive director, I guess. The initial judgments were made by the artist and the architect involved, and their judgments were then reviewed up the line, particularly when it got into the protest situation over whether or not that initial judgment had been correct.

Mr. CLINGER. Thank you.

Mr. OBERSTAR. Thank you, Mr. Clinger.

Mr. Posthuma, for the original design of the three stations Metro specified 13 types of granite. Of those, 12 were available domestically. The redesign, your testimony indicates, was carried out primarily to save money. Only 10 of the 16 specified types of granite were available domestically.

Now, did Metro intentionally specify a greater reliance on foreign-source granite to save cost?

Mr. POSTHUMA. We intentionally specified a greater range of sources, I think, because we had gotten comments that our original specification was too slanted towards the Cold Spring Company. To the extent that they control most of the U.S. quarry system, perhaps that was the unintentional effect of trying to open up the specification to broader competition.

But we did not deliberately seek out foreign stone. We had a color pattern we were trying to meet and we were trying to get as wide a range of sources as we could. We were not looking at this as a domestic-versus-foreign issue.

Mr. OBERSTAR. Well, what were Metro's reasons, then, for denying Cold Spring's request of January 20 of this year that each granite group contain one American product choice?

Mr. POSTHUMA. I am not clear on that. We did have—at that point it was becoming time-critical that we actually get this project awarded. We believed—and I think the record would somewhat indicate—that American manufacturers can obtain stone from foreign sources. In fact, the Cold Spring Company was able to do that in all cases but one, apparently.

Mr. **Oberstar**. Yes. And perhaps coincidentally, the one case was the stone that Metro wanted.

Mr. **Posthuma**. Well, we wanted those other shades as well in the areas where they were able to find the stone, purchase it, and manufacture it in the United States.

Mr. **Oberstar**. Well, in the original design, granites that are characterized as having a waterjet finish were specified. Metro's consultant, Vicki Scuri, informed the subcommittee staff that she had received complaints from foreign suppliers about that particular product with that finish on grounds that only Cold Spring Granite could supply that finish.

Now, the waterjet finish was dropped in the redesign plans. Was that to accommodate concerns of foreign suppliers; to accommodate their complaints?

Mr. **Posthuma**. It was to the extent that we did not want to get in a situation where we only had one supplier.

Mr. **Oberstar**. Even if that meant compliance with Buy America?

Mr. **Posthuma**. Well, it would have put us in noncompliance with Federal laws about exclusionary and discriminatory specifications.

Mr. **Oberstar**. I understand your desire to have competition. But on the other hand, the ultimate result was that a stone that could only be provided from Italy and for which there was no domestic equivalent, was requested because the specifications were based on aesthetics.

Mr. **Posthuma**. You're talking about the Rosa Beta shade?

Mr. **Oberstar**. The ultimate choice, yes.

Mr. **Posthuma**. Yes.

Mr. **Oberstar**. The ultimate selection.

Mr. **Posthuma**. Well, again, Mr. Chairman, it was our understanding that domestic manufacturers could obtain that stone. It was at the time, and it remains, our understanding that they can obtain that stone.

Mr. **Oberstar**. But your concern was that there would be a heavy reliance on an American supplier and Cold Spring's concern was that there was too heavy a reliance on a foreign supplier, and the tilt ultimately went in the direction of the foreign product.

Mr. **Posthuma**. Well, even in that last specification, you know, we had on one of the color shades in the specification had exclusive Cold Spring product. I mean we did not go out and attempt to deliberately take Cold Spring out and put foreign stones in. We tried to make sure that we had multiple source, not a single bidder.

Mr. **Oberstar**. What proportion of the speckled stone is for the walls and what proportion is for the floor?

Mr. **Posthuma**. I believe most of it is for the floor and a small portion for the wall.

Mr. **Oberstar**. And what effect do you think it's going to have on ridership if you had had a slightly different color stone?

Mr. **Posthuma**. I don't know exactly what the effect is. Like I said, this is something that thousands of people are going to see every day in our city. They are going to see it for decades. If it has a marginal impact, you know, it may be worthwhile.

I would point out that at least the way the bid was submitted the only request for a substitution was in the wall stone, not in the flooring stone.

Mr. OBERSTAR. Riders don't really have an option, do they? They are either going to use Seattle Metro, or they're going to ride something else—their car—or walk. You're not competing with another transit system?

Mr. POSTHUMA. Well, we are competing with the automobile.

Mr. OBERSTAR. Yes.

Mr. POSTHUMA. And we definitely want people in our tunnels.

Mr. OBERSTAR. So, I hold these stones up.

[Pause.]

Mr. OBERSTAR. I have looked at these at great length. I have had my staff look at them, and for days I have had visitors to our office, including REA Boards of Directors. And for the life of me I haven't been able to get anyone to say that they would choose to ride on a subway system on the basis of the color of one or the other of these stones.

Parenthetically, and inconsequential for the purpose of the hearing, is that almost everyone has chosen this stone as the one they prefer aesthetically. We are not here to debate the aesthetics, but I just thought that was curious.

The point is that flexibility seems to be in the direction of the foreign supplier, and it appears largely because of cost, rather than on the basis of the concern for the compliance with the law, which is to have a bent in the direction of the American-produced goods.

Mr. Maile, Seattle Metro says the Cold Spring bid was nonresponsive because your company offered Deer Island granite and "because the company chose to unilaterally change the specific quantities of various tiles Metro requested in its bid documents."

At what point did you realize that your bid was nonresponsive because of the change in quantity?

Mr. MAILE. When I got here today and read the testimony presented by Seattle.

Mr. OBERSTAR. You were never legally informed of it being nonresponsive because of change in quantity?

Mr. MAILE. No. All the correspondence we have only addresses the disapproval of Deer Island for the speckled granites.

Mr. OBERSTAR. Why do you suppose, if that was a material factor, that you were not notified prior to today about it?

Mr. MAILE. I would like to ask that question of Seattle.

Mr. OBERSTAR. Mr. Posthuma, why was that not brought to their attention earlier?

Mr. POSTHUMA. Well, we felt that we had, you know, sufficient grounds to find the bid nonresponsive on the basis of the color substitution. That issue was joined because of the preaward process before bids were actually opened. So, I mean we have been dealing with this subject and not bringing the quantities in largely because the issue was joined in the preaward substitution process, and the protest came to us on that basis. We have been dealing with the color substitution issue because that started before we had this issue on the change in quantities.

Once we find a bidder nonresponsive, we don't explain all the other problems to a bidder in terms of their bid. It was, however, real clear to us that it was a legitimate ground for also finding this bid nonresponsive. It is in bidding law, and I am not a contracting expert, but people that we have do this tell me that if you change the quantity without some prior approval, there is no grounds for then comparing bids, and you have to find the bidder nonresponsive, it's not an optional issue at that point.

Mr. CLINGER. Would the chairman yield for just one question?

Mr. MAILE. Excuse me, Mr. Chairman. I would like that part to become part of the record also.

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania. Mr. Clinger?

Mr. CLINGER. My question to you, Mr. Maile, was why did Cold Spring change quantity of granite to be supplied?

Mr. MAILE. I would like to read part of the documents that give my reasons. Part of the procurement contractor's obligation, which hopefully would have been us, says: "Work to be provided by the procurement contractor: Finished stone, complete, with all cutouts, curves, sinkages, and relief cuts for grid struts and anchor system," et cetera, "complete."

That is in the stone installation interface section of the specification. Back under examination of bid and contract documents there is verbiage that says: "The failure or neglect of a bidder to examine such documents, work site statutes, regulatory ordinances, resolutions, or documents incorporated by reference shall in no way relieve the bidder from any obligations with respect to the bidder's bid or to the contract. No claim for additional compensation will be allowed based upon a lack of knowledge of any contract documents."

Our estimators surveyed the quantities that appear on the bid documents. The bid documents also allow for interlinulations, provided an explanation is provided above my signature, which was done.

So, that means we were obligated to supply all the granite that was shown on the plans and specifications. The bid documents also say that the bids had to be balanced, which means if I had used my price and their quantities, my unit prices, which were also required in the bid form, would have been out of balance. I was obligated to——

Mr. OBERSTAR. So, that is the reason you submitted different quantities?

Mr. MAILE. Exactly.

Mr. OBERSTAR. I see.

Did the gentleman have a further question?

Mr. MAILE. I also, at that bid opening, when the bids were being opened, there was some discussion about quantities, and I revealed that fact at bid-opening day.

Mr. OBERSTAR. Thank you for that information.

Mrs. BENTLEY. Would the chairman yield?

Mr. OBERSTAR. I'm sorry, I didn't see the gentlelady there.

Mrs. BENTLEY. You were not notified at the time of the bid opening? Metro said nothing to you then about being disqualified for changing the quantities specified?

Mr. **Maile**. No.

Mrs. **Bentley**. Okay.

Thank you, Mr. Chairman.

Mr. **Oberstar**. Ms. Deese, as I understand it, you dealt with UMTA about the applicability of Buy America.

Ms. **Deese**. That's correct.

Mr. **Oberstar**. Would you tell the subcommittee your impressions, and specifically focus on UMTA's decision that granite was not subject to Buy America?

Ms. **Deese**. Well, my initial contacts were with Mr. Gill at UMTA, and he was very helpful, especially in explaining how the procedures would work if we wanted to request UMTA to reconsider their ruling on Buy America application to finished granite.

We submitted a request at the beginning of January 1987, requesting that Buy America be applied to finished granite because, in our opinion, it was a manufactured product. We provided support to Mr. Gill and explained to him that the contract bid date was at the end of January and that we needed his opinion quickly so that Buy America could apply.

His opinion, unfortunately, was not forthcoming, and we had congressional intervention from Mr. Stangeland's office call UMTA and ask that they render an opinion in an expeditious fashion prior to the bid date.

Unfortunately, Mr. Gill's opinion was not rendered until two days after the bids were submitted on the original Westlake station, so that Buy America did not apply to finished granite on that Westlake station.

That was the end of our involvement in Buy America at that point.

Mr. **Oberstar**. Did you get any indication from UMTA why it took so long to get that decision to you?

Ms. **Deese**. Well, my understanding was that Mr. Gill was very busy. We were a little discouraged with that fact because this was a very major contract for the Cold Spring Granite Company, and we felt that—in fact, I had explained to him on the phone what the problem was early in January and had given him, you know, plenty of background information on the product and why we believed that the legislative history did in fact not exclude manufactured products such as granite, that it shouldn't have taken as long as it did for an opinion to be rendered.

In terms of our further involvement in Buy America, we got involved again when in December of 1987 Mr. Maile was attempting to have Deer Island specified as a substitute for this tri-station project. I contacted Mr. Gill and informed him of the problem with the contract itself, that there were not domestic granites specified in all the categories.

He explained about the exclusionary and discriminatory provisions that UMTA considers or specifications that UMTA considers unfair. And he continued to be very helpful in assisting us in filing a protest, which Mr. Maile filed with UMTA—excuse me, with Seattle on the failure to include Deer Island as a substitute product.

I informed Mr. Gill all along the way of Seattle's unwillingness to budge on their artistic consideration rationale. I don't think that he, in my opinion, agreed with their rationale, and explained that decisions such as that are supposed to be transit-related, not artistically related. We conveyed that opinion to Seattle in our subsequent correspondence with them in our protest.

Finally, when we asked for a review of our protest and filed that with UMTA here in Washington, the UMTA regional authorities, it seemed that all of a Buy America problem because we hadn't alleged a clear violation of law: We hadn't alleged that Seattle was purchasing from someone that they shouldn't be; rather, we were alleging this nebulous concept of circumventing Buy America.

So, no one in the Washington office that we have knowledge of reviewed our protest. It was decided by regional authorities, and again their letter, which we have submitted in our written comments, suggest that it was for artistic reasons: in fact, the architecture of the station would enhance the transit ridership.

We didn't take this to court, for financial reasons at this point. But we are quite frustrated with the way the entire review process was handled—or rather, wasn't handled—by the Washington UMTA people.

Mr. OBERSTAR. Thank you. I will come back to that point.

At this point the Chair would like to yield to the gentlewoman from Maryland.

Mrs. BENTLEY. Thank you, Mr. Chairman.

Mr. Rinn or Mr. Maile, are domestic stone production industries at a disadvantage in meeting large orders such as the Seattle Metro as a result of competition with foreign producers?

Mr. RINN. Cold Spring Granite is not at a disadvantage in meeting large orders. In fact, in one project we performed recently, the Harrisburg State Capital project, it was pretty much determined that Cold Spring Granite was the only company foreign or domestic that could handle it, and we did the project.

Mrs. BENTLEY. How did the freight rate—I am presuming you were going to rail it from Minnesota to Seattle—how did that compare to the ocean rate, do you have any idea, from Italy?

Mr. RINN. My understanding is that we truck it, but that the transportation rate is substantially less than what the foreign supplier could provide.

Mrs. BENTLEY. Okay.

Mr. Posthuma, Could you tell me what parts of the Seattle Metro are foreign and which parts are domestic or American-made.

Mr. POSTHUMA. You're referring to the tunnel project?

Mrs. BENTLEY. The total project.

Mr. POSTHUMA. The only material I am aware of that is foreign-source is this granite tile. We do have some temporary steel. All the permanent steel is U.S. Some of the temporary steel may be foreign. We don't track the source of the temporary steel.

Mrs. BENTLEY. What is temporary steel?

Mr. POSTHUMA. It's steel that's used in the cut-and-cover station areas to hold up the walls temporarily, and then it's removed. So, it's not part of permanent structure.

Mrs. BENTLEY. All right.

Mr. POSTHUMA. That may be domestic, it may be foreign. I am just saying I don't know because we don't track that.

Mrs. BENTLEY. What about the cars or buses themselves?

Mr. Posthuma. The buses that are going to run through the tunnel are to be manufactured by the Breda Corporation.

Mrs. Bentley. By whom?

Mr. Posthuma. The Breda Corporation.

Mrs. Bentley. From where?

Mr. Posthuma. From Italy.

Mrs. Bentley. Well, that's foreign.

Mr. Posthuma. Yes.

Mrs. Bentley. Why?

Mr. Posthuma. This is a bus that has both diesel and electrical propulsion, the concept being that they will run diesel out in the county and then when they get into downtown in this tunnel, because it's in a tight, close environment, it will switch over to electric propulsion.

We put that out for bid, and we received three bids, and Breda Corporation's was the lowest bid.

Mrs. Bentley. Who were the other two bidders?

Mr. Posthuma. MAN, which had a plant in North Carolina; and Neoplan from Lamar, Colorado, and I believe they have a facility in Pennsylvania as well.

Mrs. Bentley. What was the differential in price?

Mr. Posthuma. It was substantial.

Mrs. Bentley. What's "substantial"?

Mr. Posthuma. It was substantial. It was not a Buy America situation in that the Breda Corporation is going to locate an assembly plant in the U.S. So, it wasn't a cost-differential situation. We treated all three manufacturers as meeting the same requirements for final assembly and componentry in the U.S.

Mrs. Bentley. Wait a minute. You said it was not a difference in the price, and yet a few minutes ago you said that the price was——

Mr. Posthuma. It wasn't a Buy America cost-differential situation. All these manufacturers are going to comply with being American manufacturers by meeting the final assembly and 50 percent componentry tests for being a domestic manufacturer.

Mrs. Bentley. And they are going to meet that, too?

Mr. Posthuma. Yes, ma'am.

Mrs. Bentley. How much money is involved in this?

Mr. Posthuma. It's a contract of roughly $130 million.

Mrs. Bentley. You earlier said something about a waiver for an escalator and elevator contract?

Mr. Posthuma. We submitted a public-interest waiver on escalators and elevators, and we did not receive UMTA approval on that waiver. When the bids came in, the American manufacturer of elevators and escalators was the low bidder. And so we awarded it to an American manufacturer.

Mrs. Bentley. So, you didn't have to use your waiver.

Mr. Posthuma. Well, we didn't get a waiver, but, yes.

Mrs. Bentley. You didn't get a waiver. Okay.

Who do you think are going to be the principal users of the Metro system: the Italian producers of the stone, or Americans living over here?

Mr. Posthuma. Well, it's going to be Americans living in our community and riding to downtown Seattle.

Mrs. **Bentley**. Maybe even some people from Minnesota once in a while; right?

Mr. **Posthuma**. Well, we hope they come to final-four basketball games, to a lot of things.

Mrs. **Bentley**. The one thing that disturbs me through much of what I have heard—and not just today—instead of consideration being given by people like yourself, who can and do award contracts, is that you're looking at the lower line exclusively without giving thought to the total cost and benefits to this country.

I just passed an amendment to the defense authorization bill which would exclude the cost of federal taxes in the computation of domestic bids. In other words, social security, a company like Cold Spring has got to compute taxes, social security and the costs of unemployment compensation, into their bids.

Now, if those items were excluded in the bid on your buses, where would the American producers stand versus the foreign ones that you granted the contract to?

Mr. **Posthuma**. I can't answer that one, ma'am.

Mrs. **Bentley**. It's a 30 to 40 percent difference.

Mr. **Posthuma**. Okay.

Mrs. **Bentley**. Would the Americans be the low bidder?

Mr. **Posthuma**. Well, all three of the bidders we had on the buses are American manufacturers.

Mrs. **Bentley**. Not really. Come on. Not really. Come on, let's be honest about it.

Mr. **Posthuma**. The 40 percent differential would have changed the order of the bidders.

Mrs. **Bentley**. And I might add that some of that money that goes into those taxes also helps contribute to your salary and to the salaries of others in your organization. When we talk about American companies having higher costs, I think we need to look at the fact that our standard of living is higher and that directors of transit systems overseas do not get paid as well as you, et cetera.

That's all I have to say, Mr. Chairman.

Mr. **Oberstar**. I thank the gentlewoman for those questions.

I would like to pick up on a point that Mrs. Bentley raised. Mr. Posthuma, is Breda the same company that is producing rail cars for the D.C. Metro subway?

Mr. **Posthuma**. Yes, sir.

Mr. **Oberstar**. Breda Construcione.

Are they complying with Buy America on those vehicles?

Mr. **Posthuma**. Yes, they are.

Mr. **Oberstar**. How are they doing it?

Mr. **Posthuma**. They're doing it by locating their final assembly in the United States and by incorporating American subcomponentry. The electric propulsion system is a Westinghouse product from just outside of Pittsburgh, Pennsylvania. The diesel engine is Detroit Diesel from Pontiac, Michigan. The seats are from American Seating in Grand Rapids, Michigan. And there are other U.S components in those vehicles as well.

Mr. **Oberstar**. In the publication Mass Transit, for May of 1988, there is a notification that, "To meet Buy America requirements of Federal law, Breda is looking for an assembly site in the Seattle area."

Now, that sounds to me similar strikingly similar—to testimony we received earlier about Siemens in the Sacramento project, where they set up an assembly site and brought in German nationals to turn wrenches and put parts together. It is similar to the situation we heard testimony on earlier about the New York/New Jersey Port Authority providing special funding incentives for foreign manufacturers to set up an assembly site in the U.S. and, in effect, squeeze out already established U.S. manufacturers.

It seems to me Breda has learned how to beat the system, to appear to take on the character of being American while retaining their foreign essence. That's what it sounds like to me. Now, that is not of your doing. I am not being accusatory, I am just simply stating what I think is a fact.

Really, the way in which this granite bid was undertaken has to be seen against the entire backdrop of this total procurement where we have yet another foreign manufacturer coming in, taking over the American market, squeezing out U.S. producers, and bringing in a few minor suppliers to take on the color of an American operator while maintaining the essence of their foreign entity.

Mr. POSTHUMA. Well, Mr. Chairman, on the Breda assembly, we have nothing in our contract that helps entice the Breda people to come to the Puget Sound area. Our only requirement contractually is that they locate in the United States, and that is to comply with the Federal statute in this area. There is no cost preference, there is nothing in terms of our relationship with Breda that provides them with an incentive to locate in Seattle.

They made that decision in a corporate sense because Seattle is a port city and they wanted to be near their first large order. But we have no control over where they locate their plant.

Mr. OBERSTAR. Well, we compliment you on being sensitive in that respect to Buy America, as required by law. But we are still very concerned about this granite issue, and we have a vote in progress on the House floor.

While I have a number of other questions, I want to close with just this one to Mr. Maile.

According to the notes I have made, Metro seems to believe that Cold Spring could have obtained granite from Italy. You have experienced difficulty, and your panel has said you were not able to obtain granite from Italy. Why? What was the problem? Did you discuss that problem with Seattle Metro?

Mr. MAILE. Yes. I told that to their purchasing agent—I don't remember exactly what day it was; certainly prior to bid time—that due to the pending trade action, theoretically that may be a possibility. But in reality it was virtually impossible for us to obtain, particularly in this case because the three granites specified under—speckled granites happen to be from Sardinia, which is one of the rarer cases where the Italians actually own the source and control the source. Usually, they buy raw stock on the open market from South America or one of the Scandinavian countries or elsewhere in the world.

Mr. OBERSTAR. They buy the raw stock, bring it to Italy, and process it?

Mr. MAILE. Yes. Bring it from South America to Italy and fabricate it and bring it to the United States, and beat us.

Mr. **Oberstar**. It just simply doesn't make any sense.

Furthermore, to say that you're in compliance with Buy America by acquiring a foreign product is contrary to the notion of Buy America. The purpose of the Buy America Act is to stimulate U.S. consumption of U.S.-produced,-processed materials to benefit the industry in the United States, in cases where American taxpayer dollars are being used for a public-purpose project. It doesn't serve the public purpose of Buy America if you satisfy the so-called aesthetics of the bid by going overseas to get a product.

Mr. **Maile**. Agreed.

Mr. **Oberstar**. Well, we have not quite exhausted although we have substantially explored the main points of this issue. I thank Mr. Posthuma for being here and responding to the committee's questions, and for the responsiveness our staff had from your staff when they made their visit to the site and inquired.

But I have to say that Metro appears to wear two hats: flexible in one circumstance of the waterjet finish issue when foreign suppliers said that that requirement would squeeze them out, and Metro bowed to their request. On the other hand, when the U.S. supplier said that this specification would squeeze out the domestic suppliers, Metro became inflexible.

It seems to me that in this case, aesthetics were being used to cover up for, or to put a different cover upon, the purpose of getting a lower-cost product and thereby evading the Buy America requirement of the law.

It clearly seems to me that if this mask of aesthetics is successful in this case, it can be used in other instances. It can be used in procuring products other than granite. It can be used as a smokescreen to circumvent the Buy America law.

I want to be clear that this is not the Buy America preference. This is not the Buy America option. This is the Buy America law. Congress didn't say, you know, you have options and choices. We said that this is the law of the land.

To evade that law by using aesthetics or specifying a design that is peculiar to a foreign source—which happens also to be subsidized and lower-cost, or calling a product unavailable on the domestic scene, is simply is a self-serving argument to evade the Buy America Act.

The fact that UMTA has allowed that to occur is of great concern to this committee. It is the reason that the law was tightened and it is the reason that we will next hear from the Urban Mass Transportation Administration.

[Letters previously referred to on page 126 by Hon. Arlan Stangeland, and the prepared statements of Messrs. Rinn and Posthuma follow:]

7TH DISTRICT, MINNESOTA

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March 24, 1988

The Honorable James H. Burnley
Secretary of Transportation
U.S. Department of Transportation
400 Seventh Street, N.W.
Washington, D.C. 20590

Dear Mr. Secretary:

It has come to my attention that the Urban Mass Transportation Administration is reviewing a bid protest filed by my constituents, the Cold Spring Granite Company. The bid protest was filed on February 16, 1988, alleging a violation of federal law by the Municipality of Metropolitan Seattle in connection with the bidding of the Downtown Seattle Transit Project. (Contract Nos. RFB 87-0114 and 88-006.)

The history of the bidding on this project demonstrates a clear intent by the Seattle authorities to circumvent the Buy America provisions and to purchase granite which the U.S. Department of Commerce has determined to be dumped in the United States.

As background for you, the Seattle Metro authorities originally requested the granite for the project be bid as part of the general bid in July 1987. However, after the initial bids were submitted Metro decided to separate granite from the general contract. This is the first indication that Metro was attempting to circumvent Buy America. As you know, the Buy America provision permits a waiver when the inclusion of domestic material will increase the "overall project contract" by more than 25 percent. Only by separating granite from the general bid could Seattle hope to make use of this waiver.

The granite portion of the project was offered for re-bid in December, 1987. The re-bid documents contained sixteen groups of granite with each group permitting bidding on one to four different types of granite. Contrary to the original bid in July, the December bid documents included five groups of granite which did not offer at least one American granite.

Cold Spring sought a substitution for one type of Italian granite and their request was denied. The rationale for rejecting the alternative granite was clearly based on the lower price offered by the Italian bidder.

By failing to agree to an alternative specification for one type of granite out of 16 categories of granite, the Metro authorities made it impossible for Cold Spring to provide a responsive bid. Cold Spring's bid was rejected by Metro as non-responsive on the basis of one type of granite which Metro did not feel was a suitable alternative for allegedly artistic reasons.

On January 7, 1988, Metro authorities requested a public interest waiver (which was later withdrawn) of the Buy America provisions to permit Metro to purchase from Italy. This project was re-bid for the third time on January 26, 1988. Once again, the Italian bid was lower than Cold Spring's bid and once again, Cold Spring's bid was rejected as non-responsive. Had Metro deemed Cold Spring's bid responsive but too high, Metro would have been forced to request a waiver of Buy America. However, by deeming Cold Spring's bid as non-responsive, Metro can purchase dumped Italian granite without requesting any waiver. In the meantime, Cold Spring has filed a bid protest with UMTA and the Seattle authorities which I understand has not yet been ruled upon.

I would like to respectfully request that you review the facts of this case especially in light of what appear to be attempts to circumvent the provisions of Buy America.

With warm regards, I am

Sincerely,

ARLAN STANGELAND
Member of Congress

U.S. Department
of Transportation
**Urban Mass
Transportation
Administration**

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

APR 5 1988

The Honorable Arlan Stangeland
House of Representatives
Washington, D.C. 20515

Dear Mr. Stangeland:

Secretary Burnley has asked me to respond to your letter concerning bidding for granite for the Downtown Seattle Transit Project. The Urban Mass Transportation Administration (UMTA) has been requested to address a number of issues concerning this matter, and, I want to take this opportunity to apprise you of the actions that we have taken.

On February 16, 1988, counsel for Cold Spring Granite Company filed a bid protest with UMTA concerning the granite contract. Seattle METRO had rejected the Cold Spring bid as being non-responsive to the METRO specifications. Cold Spring alleged that Seattle METRO's specifications for granite were designed to exclude domestic bidders, in violation of UMTA requirements forbidding exclusionary specifications; that the purpose of the exclusionary specifications was artistic rather than transit-related; that METRO may be accepting a bid based on the unfair pricing practices of foreign bidders; and that METRO'S actions violated the intent of statutory Buy America provisions applicable to UMTA-assisted procurements. Cold Spring requested that UMTA require METRO to identify a granite to be supplied by Cold Spring as a suitable alternative to that specified by METRO, and require METRO to accept Cold Spring's bid of January 26, 1988, as the only responsive bid.

UMTA rejected the bid protest because, as discussed below, it lacks the legal basis for ruling in favor of Cold Spring. In addition, UMTA is not empowered to grant the type of relief being sought by Cold Spring.

UMTA's review of any protest is limited to violations of Federal law or regulations; and failure of a grantee to follow its own protest procedures or failure to review a complaint or protest.

Cold Spring alleged that METRO's specifications were designed to exclude domestic bidders. Regardless of whether a grantee is specifying a foreign or a domestic product, the grantee's decision on specifications will be upheld by UMTA as long as it is based on reasonable needs of the grantee and is not arbitrary or capricious. Rationally based criteria for product selection will not be held by UMTA to be unduly exclusionary. UMTA found that there was no evidence of an arbitrary or capricious decision made by METRO to specify a foreign product or exclude domestic bidders. Under the "Buy America" requirements, a grantee can specify a foreign product since the "Buy America" requirements set forth a domestic preference standard rather than an absolute requirement that items of U.S. origin be procured. Cold Spring correctly pointed out that METRO's specifications are based in part on artistic considerations. This is not per se improper. UMTA will not substitute its judgement for that of a grantee concerning aesthetics, especially in a case where it is clear that professional advice was sought and followed in the specification of materials.

Cold Spring has complained that prior to rebidding the tunnel station work, METRO improperly separated the granite contract from the general contract. The alleged motivation for the segregation was to increase the likelihood that foreign granite would qualify for a "Buy America" waiver based on price differential. UMTA can only speculate on METRO's motives in segregating the contracts. However, there is nothing in UMTA's "Buy America" requirements that prohibits the segregation of contracts. In fact, UMTA has previously addressed this issue in regard to a single bid for a construction contract wherein multiple items would be procured under that contract. In such a situation, it is UMTA's position that the price differential waiver (as provided in Section 165(b)(4) of the Surface Transportation Assistance Act of 1982 [STAA]) must be applied independently to each individual item being procured under such a contract. The bid for each non-domestic item would be adjusted by the differential and then the adjusted bid price for the foreign item compared to the lowest responsive and responsible bid for a domestic item to determine if the grounds for a waiver exist. In essence, this means that it is irrelevant in determining whether a price differential waiver will be granted whether there is a single contract or a number of contracts when a number of different products are being procured--the differential is applied to each product.

Once UMTA rejected the Cold Spring protest, Seattle METRO was faced with having no responsive and responsible bidders who offered domestic material, and, thus METRO applied to UMTA for a "non-availability" "Buy America" waiver.

Section 165(b)(2) of the STAA provides that the general requirements concerning domestic preference shall not apply if the item or items being procured "are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality." The regulations implementing this provision (49 C.F.R. 661.7(c)) provide that the statutory conditions will be presumed to exist if no responsive and responsible bid is received offering equipment that meets the applicable statutory and regulatory requirements in order to qualify as a domestic manufactured product.

Since METRO did not receive any responsive and responsible bid offering items produced in the United States, the grounds for a waiver properly exist.

Therefore, a waiver was granted to METRO to permit the procurement of finished granite from a firm which is supplying items that do not meet the "Buy America" requirements governing the procurement of manufactured products.

UMTA is aware that the U.S. Department of Commerce determined that granite products from Italy and Spain are being sold in the United States at less than fair value in violation of U.S. law. As a result, importers will have to post a customs bond for granite being sold by companies found to have dumping margins above .5 percent in anticipation of the imposition of antidumping duties at the close of the Commerce investigation. This determination would have been taken into consideration if METRO had requested a "Buy America" waiver based on price differential rather than on "non-availability." In this regard, UMTA will inform Seattle METRO that UMTA funds will not be available to Seattle METRO if their granite contractor attempts, in any way, to pass any increased costs due to antidumping duties on to Seattle METRO.

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Al DelliBovi

Alfred A. DelliBovi

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COMMENTS BY
COLD SPRING GRANITE COMPANY
COLD SPRING, MINNESOTA

TO THE
SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
OF THE
HOUSE COMMITTEE ON PUBLIC WORKS

CONCERNING THE APPLICATION OF BUY AMERICA UNDER
THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

MAY 12, 1988

I. INTRODUCTION

Cold Spring Granite Company appreciates the opportunity provided by the Subcommittee on Investigations and Oversight to review its experience with Buy America under the Surface Transportation Assistance Act of 1982.

Cold Spring Granite is particularly concerned with the application of Buy America in two recent transit jobs for the Seattle Metro. The first project, however, was not subject to Buy America as a result of an opinion rendered by the Urban Mass Transportation Administration (UMTA). UMTA's opinion was modified to require that Buy America apply, but not until two days after the job was bid. UMTA was originally of the opinion that Buy America did not apply to finished manufactured granite because it was a mined product. Unfortunately, UMTA's revised opinion that in fact Buy America should apply to the procurement of finished granite was not rendered until two days after the Seattle Transit Authorities accepted bids in the first transit project (known as the Westlake Station).

In the procurement of granite for the second transit project (referred to herein as the Tri-station Project), the Seattle Transit Authorities engaged in activities which led to the circumvention of Buy America. It is Cold Spring Granite's position that absent guidance from this Subcommittee, UMTA and local transit authorities throughout the country will look to the action taken by Seattle in order to avoid the provisions of Buy America.

II. THE DOMESTIC INDUSTRY

Cold Spring Granite Company is headquartered in Cold Spring, Minnesota, but also maintains production facilities in Marble Falls, Texas, Raymond, California, and Au Sable Forks, New York. Additionally, the Company operates 33 quarries throughout the United States. Cold Spring has fabricated granite for some of the largest building projects in the United States including the Bank of America in San Francisco, Coca-Cola Headquarters in Atlanta, Lincoln Center in Minneapolis and such transportation projects as BART in San Francisco, MARTA in Atlanta, as well as the rapid transit systems in Chicago and Miami.

Granite has been used in the construction industry for thousands of years. It is only in this century, however, that the technology for sawing huge blocks of stone into slabs of granite was developed. The past decade has witnessed some of the most dramatic changes in this technology such that today granite can be sawn into slabs as thin as three eighths of an inch.

Due to the millions of years of geological activity which result in the formation of granite, it is one of the hardest stones produced by nature. Its strength and durability together with its aesthetic characteristics, has made granite a useful and immensely popular stone for monuments, buildings, and paving. The renewed popularity of granite in the building industry in recent years is due to factors including

--the increased costs associated with producing other types of building materials such as steel, glass and aluminum,

--a decline in the cost of manufacturing and installing granite due to significant technological advances,

--the durability of granite and its maintenance free qualities, and

--the postmodern architectural movement's interest in natural building materials.

The United States is far and away the largest purchaser of granite veneer in the world. The U.S. International Trade Commission has estimated that apparent consumption for finished granite (not thicker than 2 1/2 inches) in the United States rose more than 60% in three years, from $134 million in 1984 to $217 million in 1986.[1] At the same time, however, the share of domestic consumption accounted for by Italy and Spain increased from 40% in 1984 to 54% in 1986. The gains in market share experienced by importers from Italy and Spain were clearly at the expense of the domestic industry. During this same period of time, the domestic industry's share of the market declined from 51% in 1984 to 40% in 1986.[2] The domestic industry losses were due to one thing: unfairly priced Italian and Spanish granite.

On July 28, 1987, the three largest domestic manufacturers of finished granite products filed an antidumping and countervailing duty petition against imports from Italy and Spain.[3] The U.S. International Trade Commission determined unanimously that there was a preliminary indication of injury to the domestic industry. The U.S. Department of Commerce has determined that subsidies exist and that Italian and Spanish manufacturers have been selling finished granite in the United States at unfair or predatory prices. U.S. importers of Italian and Spanish finished granite products are subject to additional penalty duties as a result of these determinations.

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[1] Certain Granite from Italy and Spain, USITC Preliminary Affirmative Determination of Injury, A-13 (Sept. 1987).

[2] Id.

[3] Cold Spring Granite Company is one of the three manufacturers which filed an industry petition with the U.S. International Trade Commission and the Department of Commerce.

Despite these affirmative determinations by the U.S. government, domestic manufacturers such as Cold Spring have continued to lose major jobs to low-priced imports from Italy and Spain. Even where the law provides an advantage for an American manufacturer, sales are lost to these dumped and subsidized imports because of their low prices. Clearly, the most unfair lost sale is one in which the Buy America provisions of the U.S. statute are flaunted by the very government that penalized importers for dumped and subsidized granite purchases. Such was the case in the recent circumvention of Buy America by the Seattle Metro Transit authorities and the Urban Mass Transportation Administration in the procurement of at least $4 million of finished granite.

III. SEATTLE METRO TRANSIT STATION

A. TECHNICAL ASSISTANCE PROVIDED BY COLD SPRING

Cold Spring became involved in the Seattle Metro Transit Station projects in June of 1985. At that time, John Maile of the Cold Spring Granite Company was contacted by Parsons, Brinckerhoff and The Richardson Associates, who served as architects for the projects, to put on a presentation concerning granite. Mr. Maile is recognized as a specialist in the industry. From June 1985, to June 1987, Mr. Maile made numerous office visits to the architects to discuss granite colors, finishes, detailing, engineering, and methods of attaching the granite for installation. During these two years, numerous granite samples were submitted by Cold Spring for color and finish consideration.

Additionally, Mr. Maile assisted the architects with their understanding of granite and its uses and applications. The plans and specifications developed by the architects reflected the engineering assistance Mr. Maile and Cold Spring had provided. Mr. Maile designed and proposed the support system which will be used by Seattle in the installation of the granite. The installation system is unique because is allows the utilities to be easily accessed for service. This important engineering innovation permits access to the utilities without destroying the design or impairing the integrity of the overall granite structure. Mr. Maile's assistance and knowledge were available without charge to Seattle. The costs for such expertise and marketing were borne by the domestic granite manufacturer with the objective of being the successful bidder.

Additionally, Mr. Maile assisted the architects by providing numerous granite samples. The plans and specifications included several of Cold Spring's granites as a result of these efforts. The specifications permitted substitutions for the specified products. According to the specifications, substitution requests were required to include information pertaining to certain characteristics of each granite proposed for substitution. Each request was also required to be accompanied by three granite samples with different specified surface treatments. See Plans and Specifications § 2-18, at Attachment 1.

It is Cold Spring's understanding, that though the contract set forth very specific requirements for substitution requests, with the exception of Cold Spring, none of the other companies requesting substitutions provided the required information. In fact, had the substitution requests been accompanied by the required data, it is likely that some of the types of granite approved by Seattle Metro for substitutes would not have met the minimum standards set forth in the technical specifications.

A specific example of a substitute which does not meet the minimum specifications but was approved as substitute by Seattle Metro is rosa beta. The Seattle specifications require that the modulus of rupture or the flexural strength of any granite used in the project withstand not less than 1,500 pounds of pressure per square inch (psi). Testing performed on rosa beta by the

Universita di Pisa in Italy demonstrated that the average modulus of rupture for rosa beta was only 1,395 psi. See Test Data From the Universita di Pisa Performed on Rosa Beta, November 11, 1985, at Attachment 2.

The absence of required data submitted by other bidders should be compared with the materials submitted by Cold Spring Granite in requesting that Deer Island granite be substituted for Ghindone granite. See Request for Substitution from Cold Spring Granite Company, December 28, 1987, at Attachment 3. Cold Spring only made a substitution request for this one type of granite. The substitution was denied for allegedly artistic reasons which are discussed in more detail below.

Such a blatant disregard for technical specifications by the Seattle Metro authorities is frightening. The implication, however, of a violation of technical specifications is potentially severe in light of the number of transit riders which could be effected by the installation of an unsafe or untested granite product. While Seattle Metro was unwilling to approve a technically sound granite substitute requested by Cold Spring Granite, it was more than willing to ignore its own specifications in approving an Italian substitute for the same category of granite. It is Cold Spring Granite's position that

Seattle Metro's approval of substitutes absent proper documentation and supporting data was all part of their plan to circumvent Buy America and purchase inexpensive Italian granite.

B. CHRONOLOGICAL EVENTS

1. Westlake Station

The first project bid was the Westlake Station in January 1987. The original bid documents for the Westlake Station stated that the Buy America provisions were not applicable. The bidders were apprised by Vladimir Khazak of Seattle Metro at a pre-bid meeting on December 3, 1986, that Buy America would not apply to the procurement of granite based on an opinion rendered by Edward Gill of the Urban Mass Transportation Administration ("UMTA"). Seattle Metro also provided the planholders with copies of the Buy America requirements at that meeting. See Memorandum from Elaine P. Swanson, Supervisor for Contract Administration to Planholders on Contract No. T/F36-86, December 3, 1986, at Attachment 4.

Metro's announcement was based on a September letter from Edward J. Gill, Deputy Chief Counsel at UMTA to Catherine Roach an attorney for the Seattle Metro. Mr. Gill's interpretation of Buy America was premised on his understanding that finished granite was a "mined product" and therefore, excluded by section

165 of the Surface Transportation Act of 1982. See Letter from Edward J. Gill, Jr., to Catherine Roach, September 19, 1986, at Attachment 5.

The finished granite products which were the subject of Seattle Metro's bid, however, were fabricated pieces of dimensional granite, not merely rough, unfinished blocks of granite as suggested by the term "mined." Therefore, Cold Spring Granite Company submitted comments to Mr. Gill on January 7, 1987, suggesting that his earlier opinion concerning the application of Buy America to fabricated granite was not supported by the statute or legislative history. Cold Spring Granite also apprised Mr. Gill of the bid deadline for the Westlake project which was then, January 22. See Letter from Pamela M. Deese to Edward J. Gill, Jr., January 7, 1987, at Attachment 6.

Prior to the January 22 deadline, the Honorable Arlen Stangeland contacted the congressional affairs office at UMTA expressing concern that Cold Spring Granite's request be handled expeditiously. On January 22, Cold Spring Granite's counsel spoke with Mr. Gill to urge him to respond immediately. Though bid day was moved to January 28, 1987, Mr. Gill did not render his opinion on Cold Spring Granite's request until January 30 -- two days after the bids were made. Mr. Gill's revised opinion concluded that Buy America did apply to fabricated granite.

Unfortunately, it appeared that the Seattle authorities had been notified too late. See Letter from Edward J. Gill, Jr., to Pamela McCarthy Deese, January 30, 1987, at Attachment 7. Hence, the granite portion of the general bids on the Westlake Station were not subject to Buy America.

Cold Spring Granite understands that the low bidder who was granted the contract is using an Italian fabricator for the more than 89,500 square feet of granite specified for this project. The U.S. importer of this Italian granite is required to pay an antidumping duty as a result of a preliminary affirmative Department of Commerce determination of dumping by Italian and Spanish fabricators. Cold Spring Granite finds it incongruous that a project which clearly is covered by Buy America was awarded to a non-American company who was found by the Department of Commerce to be dumping fabricated granite in the United States.

2. Tri-station Project

The Tri-station Project was the second phase in the Seattle Transit projects and involved the construction of three underground stations. Mr. Maile of Cold Spring Granite had continued to work with Seattle's architects and artist, Vicki Scuri, to prepare the Tri-station Project even though Cold Spring was unsuccessful on the Westlake Station. In fact, Ms. Scuri wrote Mr. Maile in March 1987, to express her gratitude and appreciation for his assistance in helping to determine the "appropriate granites." See Letter from Vicki Scuri to John Maile, March 10, 1987, at Attachment 8.

On July 2, 1987, general bids were made on the Tri-station Project. Of the 13 granites bid by Cold Spring, only red vanga from South America was required to be of foreign source. Cold Spring's bid of July 2, 1987, was approximately 3.5 million dollars. The general bid, being the total package for all work in all three stations, exceeded the budget by approximately 14 million dollars. Due to the budget overrun, all bids were rejected, and Seattle Metro ordered extensive cost reduction design changes.

From July, 1987, to December, 1987, Mr. Maile continued to work with the architects on detailing, color, and finishing cost reduction changes. Between July and December, 1987, Seattle Metro decided to separate the granite from the general re-bid. Seattle Metro's decision was to use a pre-procurement bid, with an assignment to the general contractor. The general bids had ranged from $89.5 million to $104 million. Oddly, the granite portion of the project was separated from the general bid to obtain additional cost savings. Given the fact that granite represented no more than 4% of the general bid, this was an unusual decision by Seattle Metro.

Seattle Metro's strategy allegedly was intended to avoid markups by contractors and subcontractors. In practice, the effect of separating the granite from the general re-bid, was to alter the impact of Buy America. By treating the granite as a separate contract, the Buy America provisions would be waived if the inclusion of domestic material increased the contract by 25 percent. Seattle Metro's actions were in violation of Buy America.

The publication of the bid for the granite procurement occurred on December 7, 1987. Mr. Maile picked-up the bid documents on December 9. The bid document's mandatory terms and conditions contained such items as bids shall be made on the bid form issued without reservation or amendment; a bid bond of five percent of the bid is required; bids can be rejected for omitting a bid on any one or more items on which bids are required, unbalanced bids, or lack of unit prices.

The bid documents separated the granite into two sections, stone veneer, and stone pavers and flooring. Within each of these two sections there were eight groups of granite, each group having a choice from one, to as many as four granites to bid. Among the sixteen groups (two sections with eight groups in each), five groups did not offer at least one American granite.

To further complicate domestic bidding, Seattle Metro issued Addendum No. One on December 21, 1987, which, among other things, deleted Cold Spring Black granite from the specifications and replaced it with "Southern Black Granite." See Part D Addendum No. 1, at Attachment 9. Mr. Maile submitted a letter to Seattle Metro on January 8, 1988, suggesting that each group offer at least one American granite since this was a Buy America project. See Letter from John Maile to Al Pelton, January 8, 1988, at Attachment 10.

On December 28, 1987, Cold Spring Granite submitted a formal substitution request. See supra, at Attachment 3. The bid documents provided for pre-bid substitution requests for submitting products in place of those specified. Cold Spring requested to substitute Deer Island granite in lieu of Ghindone. Deer Island is a domestic granite from Maine. Ghindone granite is Italian. The granite category specifying Ghindone also included two other Italian granites, Rosa Beta and Rosa Antico.

The original plans and specifications for the Tri-station project specified two Cold Spring granites for use as a "speckled" granite. See Contract No. T/F 31-86, Part 2.01 section A.3.h. GV-23 Speckled, May 1987, at Attachment 11. The revised plans and specifications after the general bid, specified three Italian granites for GV-23 Speckled granite. See Contract No. RFB 87-0114, Part 2.01 section A.3.i. GV-23 Speckled, December 1987, at Attachment 12.

In consideration of the pending antidumping and countervailing duty investigations, Ghindone, Rosa Beta and Rosa Antico would be virtually unavailable to domestic manufacturers. Cold Spring Granite's choice of Deer Island was based on its similarity to these three granites, as well as its domestic origins, availability, qualifying test data and its extensive use in many other transit projects throughout the United States. The bid documents required documentation with substitution requests as to performance, test data, and a listing of the names of projects using the granite under similar conditions. See supra, at Attachment 3.

Cold Spring Granite received a letter from Alan M. Pelton on December 28, 1987, stating that Seattle Metro had received a request for a public interest waiver of Buy America. Mr. Pelton invited all prospective bidders to submit comments on a waiver by January 6, 1988. See Letter from Alan M. Pelton to All Prospective Bidders, December 21, 1987, at Attachment 13.

On January 4, 1988, Cold Spring submitted comments to Mr. Pelton on the proposed waiver of Buy America. Mr. Pelton was informed of Cold Spring's opposition to any waiver of Buy

America. See Letter to Alan Pelton from Pamela M. Deese, January 4, 1988, at Attachment 14. A copy of that letter was forwarded to Mr. Edward Gill at UMTA subsequent to a phone call informing him of Seattle Metro's request for public comments. See Letter to Edward J. Gill from Pamela M. Deese, January 4, 1988, at Attachment 15.

On January 7, 1988, Seattle Metro filed a request for a waiver of Buy America with Mr. Gill of UMTA. Seattle Metro's letter forwarded comments in support of public interest waiver of Buy America, but did not forward Cold Spring Granite's comments in opposition to such a waiver. See Letter from Jane Elder Bogle to Edward J. Gill, January 7, 1988, at Attachment 16.

Mr. Maile attended a pre-bid meeting to raise questions concerning the bid on January 5, 1988. His first question was whether the five percent retainage of payment could be deleted. The bid documents called for payment of the retainage upon completion of installation, and acceptance by Seattle Metro. The schedule requires delivery in November, 1988, and then, opening of the three stations to the public in May, 1990. It would be possible for Seattle Metro to hold the five percent retainage for two years. Though Seattle Metro would not remove this provision, it would be interesting to see if the provision is ever applied against the Italian supplier on the Tri-station Project.

Mr. Maile's second question was whether Seattle Metro would delete the $500.00 per day liquidated damages. This was a serious concern because the bid documents allow Seattle Metro 90 days after bid opening to designate a low responsive bidder. The low bidder then has to furnish a performance bond. After the performance bond is accepted, the low bidder needs to write a contract with the prime contractor. The low bidder also needs to submit granite samples. The prime contractor needs to supply shop drawings to the stone manufacturer. All of these elements would not permit sufficient time to fabricate the stone and ship it, prior to the specified date subject to liquidated damages.

On January 19, 1988, Seattle Metro responded to Mr. Maile's two questions by denying both. See Letter from Al Pelton to John W. Maile, January 19, 1988, at Attachment 17. Though Mr. Maile had not raised the issue of substitutions at the pre-bid meeting because of the presence of competitors, Mr. Maile did express his concern to Mr. Pelton by telephone.

On January 20, 1988, Seattle Metro denied Cold Spring Granite's substitution request along with five others. At the same time, Seattle Metro approved 18 other substitutions; the majority of which were foreign, in addition to those already specified. See Letter from Al Pelton to John Maile, January 20, 1988, at Attachment 18. On the same day, Mr. Maile also received Addendum No. 2 to the plans and specifications. Addendum No. 2

identified materials which had been approved for use in addition to those specified. See Addendum No. 2 to Contract No. RFB 87-0114, at Attachment 19. Addendum No. 2 was confusing in that GP-19 which was specified in the plans as speckled granite, was listed as "GP-19 black" granite and yet, rosa beta had been listed as a suitable substitute. It is unclear why Seattle Metro listed rosa beta as a suitable alternate in Addendum No. 2 for black granite when rosa beta had been specified in the plans and specifications for speckled granite.

Only three working days remained before bid day. On January 20, 1988, immediately after learning of Cold Spring Granite's substitution denial, a bid protest was filed by Cold Spring Granite. Mr. Maile requested that the substitution request be reconsidered, the bid date be extended for one month to allow Cold Spring the opportunity to submit additional substitution requests for Ghindone, and that each granite category contain at least one American granite. See Letter from John Maile to Judy A. Riley, January 20, 1988, at Attachment 20.

Seattle Metro rejected Cold Spring Granite's bid protest in its entirety the following day, January 21, 1988. Cold Spring Granite did not receive the denial letter until January 25, which was the day before bids were due. The reasons articulated by Seattle Metro were quite clearly artistic rather than transit-related. Though Mr. Maile had informed Seattle Metro that a domestic manufacturer such as Cold Spring Granite would be unable to purchase Italian granite, Ms. Riley stated that Cold Spring could purchase the foreign stone. See Letter from Judy Riley to John Maile, January 21, 1988, at Attachment 21. Ms. Riley's letter seems to reflect the sentiments of Seattle Metro's artist, Ms. Vicki Scuri, which were expressed in a letter to Mr. Andy Moniz of Seattle Metro also dated January 21, 1988. See Letter from Vicki Scuri to Any Moniz, January 21, 1988, at Attachment 22.

Specifically, Seattle Metro's rejection of the substitute granite requested by Cold Spring Granite Company was based on the following rationale:

> The Cold Spring alternative speckled granite sample has been judged to be a ". . . cool muted-gray . . ." which would create a ". . . dull, cool underground . . . feeling". [sic] Our design objective has been . . . to create a lightened and brightened atmosphere in the station . . . The colors and grain structure of the Cold Springs [sic] substitution sample for "speckled granite" become muted when viewing it [sic] from a variety of similar distances . . . Again on comparison, the Cold Spring speckled granite substitution does not achieve the degree of emphasis wanted to create a dynamic triad of color.

January 26, 1988, was bid day. Ann Sacks of Fratelli Guarda (Italian manufacturer) submitted the low bid at $1,407,174.00; City Ceramic/Quadra Stone (Canada importer of Italian granite) submitted the second lowest bid at$1,899,451.00; Cold Spring Granite was the high bid at $2,539,534.00. See Bid tabulation of January 26, 1988, at Attachment 23.

All bids were rejected. The two low bids were rejected due to an absence of bid security which was required by the bid. It is unclear why Seattle Metro ever permitted these companies to bid without the appropriate bid security. Nonetheless, by permitting these companies to bid, Cold Spring Granite's bid was made available publicly. In a re-bid situation, foreign competitors would then be in a position to supply a bid more than 25% below Cold Spring Granite's bid. Cold Spring's bid was rejected as non-responsive due to bidding Deer Island granite under protest and denial. See Letter from Alan Pelton to John Maile, dated January 29, 1988, Attachment 24.

On February 3, 1988, Cold Spring Granite filed a protest appeal with Seattle. Cold Spring requested a review of its substitution request and alleged that the specifications were exclusionary and discriminatory. See Letter from John Maile to the Executive Director of the Municipality of Metropolitan Seattle, dated February 3, 1988, Attachment 25.

Seattle Metro denied Cold Spring Granite's protest appeal on February 4, 1988. The appeal from the denial of the bid protest resulted in a similar statement of reasons. Seattle Metro's decision on February 4, 1988, stated that:

> To say that there is no transit related purpose for the speckled stone specified is to suggest that a proposer could have substituted any granite of whatever color or finish for that specified. I agree with the discussion set forth in the January 21, letter concerning the value of having a warm and lively atmosphere in the stations. The architecture of a transit station is clearly transit related.

This denial of Cold Spring Granite's protest reiterated the "value of having a warm and lively atmosphere in the stations." See, Letter from Richard Mattsen to John Maile, February 4, 1988, received February 8, Attachment 26.

To place the Seattle Metro denial in perspective, it is necessary to understand that the speckled granite specified was only to be used in one of the three Metro stations to be constructed. Additionally, only 5,671 square feet of the speckled granite is to be polished and applied to vertical surfaces. The remaining 17,500 square feet of speckled granite is be used as flooring and will not be a polished surface.6 In comparison, the entire Tri-station Project involved at least 89,500 square feet of granite.[4/]

Moreover, while the letter from Seattle Metro of January 21 stated that the speckled granite was specified to be applied in conjunction with a bright red stone with a large grain structure and a solid black stone with a minimum grain pattern, this is not true. In fact, Seattle Metro approved three dramatically different red granites for the "bright red stone with a large grain" and only one of the granites has a large grain structure. Additionally, because three different types of granite were permitted for each of the speckled, red and black categories, Seattle Metro had little control over the possible combinations which would be bid. Clearly, Seattle Metro's justification was nothing more than an attempt to eliminate a domestic manufacturer from the bidding process.

Re-bid documents for this project were received by Cold Spring Granite on February 1, 1988. The contract reference number was changed to RFB 88-006. The contract drawings remained

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[4/] While the bid documents request bids on 89,500 square feet, a review of the plans and specifications by engineers and draftsmen at Cold Spring Granite revealed approximately 100,000 square feet of granite application. Since the bidder is responsible for providing the amount of granite identified in the plans and specifications, Cold Spring Granite's bid was based on supplying 100,000 square feet of granite.

unchanged. February 9, 1988, was re-bid day. Cold Spring Granite resubmitted their bid of January 26, 1988, under protest appeal pending.

On February 12, 1988, Cold Spring received the bid tabulation of February 9, 1988. Quadra Stone (Canadian importer of Italian Stone) was low at $1,834,418.00, Carlo Mariotti (Italian importer and manufacturer) was second at $1,848,271.00, Dal Tile/Procelli (Italian importer and manufacturer) was third low at $1,956,722.00, and Cold Spring Granite was the high bid at $2,539,534.00. See Bid Tabulation, at Attachment 27.

An appeal was filed by Cold Spring Granite on February 19, 1988, with UMTA and the UMTA regional authorities in objection to Seattle Metro's actions which denied Deer Island as a suitable alternate granite. The appeal was premised on 49 U.S.C.A. § 1602(a)(2)(c) which prohibits the use of discriminatory and exclusionary specifications. It is Cold Spring's understanding that UMTA has permitted exclusionary and discriminatory specifications only when they can be justified for transit-related purposes.

Seattle Metro's statement that the selection of one granite over a very similar granite is transit-related is self-serving. Further, Seattle Metro's statement that if their justification were not transit-related a "proposer could have substituted any granite of whatever color or finish," is extending logic to an untenable result. Clearly, the Cold Spring Granite did not request "any" granite as a substitute, but a highly regarded domestic granite. See Letter from Pamela M. Deese to Theodore A. Munter, UMTA, February 16, 1988, at Attachment 28.

Seattle Metro informed Cold Spring Granite on March 1, 1988, that its bid was non-responsive based on an unacceptable substitute. See Letter from Alan Pelton to John Maile, March 1, 1988, at Attachment 29. By declaring Cold Spring Granite's bid non-responsive, Seattle Metro eliminated the only domestic bidder and was free to purchase from Italian manufacturers.

Cold Spring Granite's bid protest was denied on March 17, 1988. See Letter from Terry Ebersole, Regional UMTA, to Pamela M. Deese, March 17, 1988, at Attachment 30. The reason for UMTA's apparent refusal to review Cold Spring Granite's protest was the absence of a clear violation of law by the Seattle Metro authorities.

On April 1, 1988, Seattle Metro informed Cold Spring Granite that Carlo Mariotti, Inc. had been awarded the granite contract. See Letter from Alan Pelton to John Maile, April 1, 1988, at Attachment 31. Under the terms of the preliminary antidumping duty determination, a penalty duty of 8.7% applies to granite imports manufactured by Carlo Mariotti, Inc. The importer is required by U.S. law to pay this amount which could be as much as $160,799 on the amount of the Seattle granite contract.

IV. CONCLUSION

Cold Spring Granite believes that Seattle Metro authorities improperly based the contract specifications which acted to exclude domestic granite on the unfair pricing policies of foreign bidders. The purported justification of the exclusionary granite specifications is transit-related. However, Seattle Metro's responses to Cold Spring's protest and appeal demonstrate only an artistic justification which should not be permitted under Buy America.

Circumvention of Buy America in this manner is in clear contradiction of congressional intent in the enactment of Buy America as well as the antidumping and countervailing duty laws. Essentially, a domestic manufacturer should be able to compete with fairly priced imports under Buy America. In this case, however, the discriminatory and exclusionary bid specifications were designed to keep a domestic manufacturer from even bidding on a project designated as Buy America. Seattle Metro's denial of a domestic alternate was not substantiated by the facts obtained in the bid process, and was, therefore, inappropriate and otherwise not in accordance with Buy America.

Municipality and the Contractor agree that venue shall rest in the Superior Court of King County, Washington, and by submitting a bid for this contract the Contractor does hereby consent to personal and subject matter jurisdiction by the Superior Court of King County, Washington.

2-16 Laws, Regulations and Permits

The Contractor shall give all notices required by law and comply with all laws, ordinances, rules and regulations relating to the conduct of the work. The Contractor shall be liable for all violations of the law in connection with work furnished by the Contractor, including the Contractor's subcontractors.

2-17 Damage to Material

The Contractor shall be responsible for all material provided under this Contract until delivered to the Station Prime/General Contractor. If any loss or damage occurs for which the Contractor is responsible hereunder, the Contractor shall immediately make good any such loss or damage, and in the event the Contractor refuses or neglects to do so, the Municipality or Prime Contractor may itself or by the employment of some other person, make good any such loss or damage, and the cost and expense of doing so shall be charged to the Contractor.

2-18 Substitution

A. Prebid Substitutions

The Municipality will consider formal requests from the prospective bidder up to fourteen (14) days before bid opening for substitution of products in place of those specified. If such a request is accepted by the Municipality, the acceptance of substitute products and methods shall be only for the characteristics and use named in the acceptance, and shall be interpreted neither as a modification to the specification and drawing requirements nor to establish acceptance of products for other portions of the work. The Municipality shall be the sole judge of the quality and suitability of the substitute product and method, and its decision shall be final.

Substitution requests shall be delivered to:

Metro
821 Second Avenue
Exchange Building, MS 71
Seattle, WA 98104
Attn: Al Pelton

B. Information to be Submitted

Requests for substitution shall contain the following information:

1. Samples

   a. Three (3) 12" x 12" x 1/2" thick sample stones with the following finish:

      1) Sample #1: Polished surface and 4 edges

      2) Sample #2: Honed surface.

      3) Sample #3: Thermal finished surface.

   b. Each sample shall be identified and characterized with the following information typed on heavyweight paper securely fixed to the back surface of each stone sample:

      1) Specified material (reference mark number and specification section).

      2) Substituted material:

         Quarry's name of stone
         Quarry's name and address
         Quarry's representative and phone number

      3) Manufacturer's name and address if different than Quarry.

      4) Signature of individual requesting substitution, printed name and title, name of company and address, and date.

2. Other Documentation

   a. Substitution request shall also be accompanied by manufacturer's and/or fabricator's literature including descriptions, performance, test data and reference standards if pertinent.

   b. Substitution request shall also be accompanied by a listing of names and addresses of projects and dates of installations closest to Seattle, Washington, on which the proposed stone was used under similar conditions.

c. If the proposed substitution affects any design, fabrication or testing of the products and components manufactured by the supplier's subcontractors, identify such affected portion of the work.

C. Certification

In making a request for substitution, the supplier shall certify:

1. That he will coordinate incorporation of the accepted substitution into the work, and will make those changes required for the work to be complete in all respects, all at no additional expense to the Municipality and with no change in the delivery schedule guaranteed in this specification.

2. That he waives all claims for additional costs related to the substitution, which consequently become apparent.

3. That he waives all claims for time extension which may consequently become apparent.

4. That the material meets or exceeds all physical and technical requirements as defined in Part B of the Contract Documents.

5. That the proposed material exists in a large enough quantity from a single quarried source to fulfill the requirements of this Contract.

2-19 Delays Beyond Control of Contractor

In the event that timely completion of the contract shall be delayed materially (i.e., that the "critical path" of the work is impacted) because of any labor strike or work stoppage, injunction or interference of any public authority, Force Majeure, or by reason of any significant circumstances wholly beyond the control of the contractor, for which cause(s) he could not have taken reasonable precaution, the completion date shall be extended a reasonable number of days for said delay to be determined in each instance in the reasonably discretion of the Municipality/ Prime Contractor.

PART 2 PRODUCTS

2.01 STONE MATERIALS

A. Granite:

1. Furnish granite conforming to the following minimum standards:

ASTM C 97	Absorption	< = 0.4%
ASTM C 97	Density	> = 160 pcf
ASTM C 170	Compressive Strength	> = 19,000 psi
ASTM C 99	Modulus of Rupture	> = 1,500 psi

2. Furnish granite free of cracks, and of colors and finishes indicated for each area of use. Comply with requirements of ASTM C 615, Architectural Grade, and National Building Granite Quarries Association, Inc. (NBGQA) for color and finish qualities.

3. Provide the following colors for Granite Veneer units indicated on the following schedule, specified by color and quarry or distributor. Granites selected for each color below are not ranked by priority, all are equally acceptable. Granite provided shall be:

   a. As indicated below, or

   b. As an approved substitution as described in the stone procurement contract pre-bid substitution provision, or

   c. As approved by the Engineer for color match with control sample for color pattern and finish texture, following award of CU03B contract as described in Section 00710 General Conditions of CU03B Contract Documents.

   d. GV-9 Red:

      1) Cold Springs, "Sunset Red". PRICE

      2) Cold Springs, "Prairie Mountain".

      3) Tileworks, "Rosso Balmoral".

   e. GV-10 Pink:

      1) Dal Tile, "Sweet Pink".

UNIVERSITA DI PISA
LABORATORIO UFFICIALE PER LE ESPERIENZE
DEI MATERIALI DA COSTRUZIONE
56100 PISA - TELEF. 501001

Certificato N. 1224

Fo. 48338/

Pisa, li 11/11/1985

Risultati delle prove di:

- rottura a flessione:

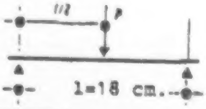
*ure da questo Laboratorio su campioni*XXXXXX*dichiarati dal Richiedente* granito denominato ROSA BETA "C

hiedente: PISANI BROTHERS S.p.A. - CARRARA.

con lettera del 9 Novembre 1985.

Il materiale è pervenuto a questo laboratorio il 11 Novembre 1985.

- Prova di rottura a flessione:



$$\sigma_{rf} = \frac{3Pl}{2bh^2}$$

N. d'ordine	Dimensioni cm h		b		c	Peso Kg	σ in Kg/cm²	
1	3.0	x	10.0	x	20.0	340	102.0	1448
2	3.0	x	10.0	x	20.0	300	90.0	1277
3	3.0	x	10.0	x	20.0	365	109.5	1554
4	3.0	x	10.0	x	20.0	305	91.5	1299
5								
6								
7							AVG.	1395
8							MODULUS OF RUPTURE	
9								
10								

L'ESPERIMENTATORE
Tec. [illegible] Franco PILATELLI
F Pilatelli

IL DIRETTORE DEL LABORATORIO
Prof. Ing. Raffaello BARTELLETTI
Bartelletti

NOV 1[illegible] 1985

Attachment 2

COLD SPRING GRANITE CO
202 .
COLD SPRIN
612-
1-800-328

LETTER OF TRANS...

D

DATE 12-28-87	OUR ORDER NO
ATTENTION AL PELTON	
RE CONTRACT RFB-ET-C	

METRO
5[illegible] - 2nd AVE. EXCHANGE [illegible] MS 71
SEATTLE WA 98104
ATT. AL PELTON

WE ARE SENDING YOU ☒ Attached ☐ Under separate cover via UPS the

☐ Shop drawings ☐ Shop Ticket Copies ☐ Letter copies ☐

☐ Anchor samples ☐ Lettering details ☒ SAMPLES

QUANTITY		DRAWING NO.	DESCRIPTION
SEPIA	PRINT		
			SUBSTITUTION REQUEST

THESE ARE TRANSMITTED as checked below:

☐ Please Return 1 Corrected Sepia

☐ For 1st Approval
☐ For 2nd Approval
☐ For 3rd Approval
☐ For Final Approval

☐ Final Record Drawing
☐ For Setting & Distribution
☐ Per Your Request
☒ For Viewing & Approval
☐ For Your Information & Coordinatio
☐ ____________

REMARKS ____________

COPY TO ____________

REQUEST FOR SUBSTITUTION

For "Ghindone"

GV-23 Speckled, 04450
GP-19 Speckled, 09600

Substitute "Deer Island" Quarry's name of stone.

Deer Island Quarry, Crotch Island, Stonington, Maine.

Quarry's representative and owner: New England Stone Industri
(401-232-2040)

Manufacturer: Cold Spring Granite Company
202 South 3rd
Cold Spring, MN 56320

Requested by: John W. Maile, Sales Manager
Cold Spring Granite Company
December 28, 1987

Deer Island - Polished
[redacted]

In making a request for substitution, the supplier shall certify:

1. That he will coordinate incorporation of the accepted substitution into the work, and will make those changes required for the work to be complete in all respects, all at no additional expense to the Municipality and with no change in the delivery schedule guaranteed in this specification.

2. That he waives all claims for additional costs related to the substitution which consequently become apparent.

3. That he waives all claims for time extension which may consequently become apparent.

4. That the material meets or exceeds all physical and technical requirements as defined in Part 3 of the Contract Documents.

5. That the proposed material exists in a large enough quantity from a single quarried source to fulfill the requirements of this Contract.

CERTIFIED -

C. Certification

In making a request for substitution, the supplier shall certify:

1. That he will coordinate incorporation of the accepted substitution into the work, and will make those changes required for the work to be complete in all respects, all at no additional expense to the Municipality and with no change in the delivery schedule guaranteed in this specification.

2. That he waives all claims for additional costs related to the substitution, which consequently become apparent.

3. That he waives all claims for time extension which may consequently become apparent.

4. That the material meets or exceeds all physical and technical requirements as defined in Part B of the Contract Documents.

5. That the proposed material exists in a large enough quantity from a single quarried source to fulfill the requirements of this Contract.

[illegible]

You bet!

Deer Island granite, a very precious stone, is back!

After a brief interruption, the granite that has been quarried for more than a century is available again. The familiar structures [illegible] on the cover represent only a portion of the vast heritage of Deer Island granite.

[illegible] owns and manages the quarry on [illegible] Island, Stonington, Maine, where this fine granite is produced. From this quarry Deer Island wharfstone and [illegible] are now offered to the trade. Quarried on a [illegible] basis, the blocks can be shipped by barge from our [illegible] and docking facility to anywhere in the world. The [illegible] can also be transported via truck from Stonington, Maine, or by truck or railcar from Rockland, Maine.

The [illegible] significant Deer Island granite project was the John F. Kennedy Memorial in Arlington, Virginia. There are 1500 stones weighing more than one ton apiece, and 17 inscription stones weighing 37 tons each, and standing 15 feet high. Currently, Deer Island granite is being used for a variety of marine projects on the Maine coast. Blocks have also been quarried recently for an addition to Rockefeller Center in mid-town Manhattan. This project involved the complete renovation and remodeling of the existing three floors, concourse, and sub-basement of the Lavoro Bank Building. The additional four floors of the structure were faced with Deer Island granite to match the present exterior.

When you consider your renovation or addition it is good to know that you can now order Deer Island granite to match the original stone, instead of accepting an inferior or mismatched substitute.

When you plan a new structure, Deer Island granite should be chosen because of its superior qualifications. Our quarry is remarkable for its sheet structure. This makes for the production of fine rectangular patterns in the stone quarried, and for ease and rapidity in quarrying. Due to the unique geological formation of this quarry, sawblocks of enormous dimensions can be economically obtained which will produce slabs of impressive size. The stock is of the best quality obtainable in the Stonington district, long noted for its superior stone. Deer Island granite is easily maintained because of its ability to withstand any climate or weather condition. The absorption ratio is low and, most importantly, the water transmission rate is greatly below that of most commercial granites. For permanence without maintenance, our granite provides solutions, not problems.

Samples finished in various ways will be furnished on request. Please contact us for further information.

Since there is increasing consumer demand for finished [illegible] Island granite products, we offer a complete line of [illegible] made fabrications. Laboratory and industrial [illegible] including surface plates are also provided. Exterior [illegible] include building facades, pool and garden [illegible] benches, patios, fountains, walkways and [illegible] steps, planters and natural boulders. Interior [illegible] walls, steps, tabletops, mantels and [illegible] as well as a number of [illegible] products [illegible] for the kitchen: countertops, floors, cutting boards, [illegible]. [illegible] for the bath, tile flooring and [illegible] installations. You'll be surprised to find that although Deer Island granite is widely known as one of the finest gran[illegible], cost is competitive with other premium granites. De[illegible] be direct to the consumer from Stonington, Maine. [illegible] inquiries invited.

DEER ISLAND GRANITE SPECIFICATIONS*

Source: Crotch Island, Stonington, Maine.

Classification: Biotite Granite

Color: Gray with pink to lavender tint

Texture: Coarse grained

Mineral Constituents in descending order of abundance:

- **Major** — Orthoclase and Microcline, Smoky Quartz, Oligoclase, and Biotite
- **Minor** — Buscovite, Magnetite, Titanite, Zircon, and Pyrite

Amount of Calcium Carbonate: .49%

Period of Time Quarried: Over 100 years

Uses: Primarily bridge and architectural

Computed Weight per Cu. Ft.: 163 lbs

Computed Weight per Cu. Y 4,401 lbs

Cubic Feet per Ton: 12.2

Compressive Strength: 25,[illegible] per sq. in. (average)

Absorption by Weight for I[illegible] sion Periods of: 48 hrs. — [illegible] 14 days — .29%, 1 year — [illegible]

Density: Bulk — 2.610 Tr[illegible] 2.645

Porosity: 1.36%

Flexural Strength (Modulus Rupture): 1,500 lbs. per sq (average)

Shearing Strength: 4,[illegible] (average)

S/C Ratio (Shearing streng[illegible] divided by Compressive Str[illegible] .23

Water Transmission Rate: grams over 48-hour per[illegible]

*From National Bureau of Standards, Department of Commerce, [illegible]

[illegible]

CONNECTICUT

	Wilbur Cross and Merritt Parkways
Hartford	Students Center, Trinity College
New Haven	F. W. Woolworth Co.
[illegible]	Distributing House — Phase II Western Electric Co.

FLORIDA

[illegible]	[illegible]
[illegible]	[illegible]

ILLINOIS

Chicago	[illegible]
	[illegible]
	[illegible]
	[illegible] National Bank
	[illegible] Building, Tribune Square
	[illegible]
	Chicago Art Museum
[illegible]	Northwestern Technological Institute
	Kendall College
[illegible]	Holy Sepulchre Cemetery Chapel

INDIANA

Fort Wayne	Lincoln National Life Ins. Co.
Indianapolis	State Office Building

MAINE

Auburn	N. E. Tel. & Tel. Co. New Exchange Building
Augusta	Maine Employment Security Commission
	Treatment Building — State Hospital
	Federal Building
	State Office Building
	Bank of Maine
Bangor	Office Building, Bangor Water District
	Bangor Theological Seminary
	Sears, Roebuck Co.
	Bangor Publishing Co.
	Patients Building, Bangor State Hospital
	Masonic Temple
Brunswick	Bowdoin College
[illegible]	American House/The Opera House
[illegible]	Glidden Point Bridge
Ellsworth	Federal Building
	Hancock County Court House
Farmington	University of Maine at Farmington
Fort Kent	University of Maine at Fort Kent
Gorham	University of Maine at Portland-Gorham
Lewiston	Church of the Holy Family
	Manufacturers National Bank
	Bank of Maine
	Peoples Savings Bank
	Carnegie Hall, Bates College
[illegible]	Eastern Trust & Banking Co.
Orono	University of Maine: Physics Building, [illegible] Engineering Building, Women's Dormitory No. [illegible] College of Education Building, Men's Dormitory No. [illegible]
	[illegible]
[illegible]	[illegible]
Portland	Portland Press-Herald Building
	Maine Savings Bank
	[illegible] Maine Company
	YWCA Building
Presque Isle	University of Maine at Presque Isle
	U.S. Post Office
	Junior High School District [illegible]
[illegible]	[illegible]
Sanford	Church for Holy Family Parish
Scarborough	Telephone Building
Searsport	Dock
Waterville	Colby College: Adm. Building, Social Science Building
	[illegible]

MARYLAND

Annapolis	U.S. Naval Academy, Bancroft Hall & Mess
Baltimore	Commercial Credit Building
	University Baptist Church
	Old Age & Survivors Insurance Building
Bladensburg	Brookings Institution
College Park	Centerville Hall, Univ. of Maryland

MASSACHUSETTS

Amherst	Fountain Memorial
	West Cemetery
Arlington	Church for Parish of St. Camillus
	Cooperative Bank
	[illegible]
	[illegible]
Boston	[illegible]
	[illegible] Newbury Street
	Cooperative Bank
	[illegible] Congress Street
	New England Merchants Bank
	Post Office Square Building
	Walter E. Fernald School
	Jordan Marsh Co.
	White Building
	Kresge & Co. Stores
	Copley Hotel column bases
	Boston City Hospital
	Boston Museum of Fine Arts
	University Club
	Harvard University, Lowell Hall
	Garden Crypt Maus., Forest Hills Cemete
	Boston College, School of Nursing
Cape Cod	Cape Cod Canal
Cambridge	M.I.T.
	New England Confectionary
	Police Headquarters
	Clarke-Woolworth Building
Dedham	Norfolk County Registry Building
Dorchester	Dorchester Savings Bank, Codman Sq. B
Fall River	Taunton River Bridge
Forest Hills	Emmanuel Mausoleum
Gloucester	Cape Ann Bank & Trust Co.
Haverhill	Haverhill Savings Bank
	Merrimack River Bridge
Holyoke	Holyoke Dam
Lowell	U.S. Post Office
	City Hall
Milton	Church of St. Elizabeth
Natick	Church for St. Linus Parish
Peabody	Elementary School
Provincetown	Pilgrim Monument
Reading	Reading Cooperative Bank
Salem	Salem Pumping Station
	Transformer Building "A"
Springfield	Mass. Mutual Life Insurance Co.
Wakefield	N. E. Tel. & Tel. Co. Exchange
W. Newton	West Newton Savings Bank

MICHIGAN

Ann Arbor	Univ. of Mich., Kresge Hearing Resear
Detroit	Passionist Fathers Retreat House
	Western Michigan College
	Greenfield Methodist Church
	Women's Intramural Building, Mich. [illegible]
	David Whitney Building
	Light Guard Armory
	Merrill Palmer School
	U.S. Post Office
	G.M. Research Building
E. Lansing	Mich. State Univ., Eugene C. Eppley H
Lansing	Lansing Civic Center
Plymouth	Western Electric
[illegible]	[illegible]

[illegible]

	[illegible]
	[illegible]

NEW HAMPSHIRE

[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
	[illegible]
	[illegible]

NEW JERSEY

	[illegible]

NEW YORK

	[illegible]
	[illegible]
	[illegible]
	[illegible]
	[illegible]
	[illegible]
	[illegible]
[illegible]	[illegible]
	[illegible]
	[illegible]
	Regina Pacis Church
	[illegible]
	[illegible]
	[illegible]
	Our Lady of Miraculous Medal Church
	Brooklyn Bridge
	Irving Trust Co
	Brooklyn-Queens Expressway
Queens	Clearview Expressway
	Grand Central Parkway
	St. John's Univ. Administration Building
	Public School #203
Staten Island	Seaside Boulevard
	Clove Lake Expressway

Manhattan

Brooklyn Bridge Approach
John Erickson Monument
Consolidated Edison Station
Essex House Hotel
North River Pier
Central Park Pedestals
Horticultural Society
Parke-Bernet Galleries
Madison Ave. Bridge
The Maurice Hotel
Macombs Dam Bridge
Manhattan Bridge
Transverse Road No. 2, Central Park
Donnell Library
Franklin Savings Bank
Bergdorf Goodman
St. Jean Baptist Church
Lamstons Stores
Abbey Victoria Hotel
Tam Hotel
Lefcourt National Building
Yeshiva University
Con Ed Building
Wan Wing Sang Columns
El Diario-La Prensa
Greenwich Savings Bank
Prince George Hotel
Congregation Emanuel
[illegible]
[illegible]
[illegible]

Chemical Bank (Branches)
Irving Trust
American Institute of Physics
Manufacturers Hanover Trust (Branches)
Women's Hospital St. Lukes
Jewish Guild for the Blind
International Ladies Garment
Workers Union
United Nations Approach & Plaza
Statue of Liberty base
St. Patrick's Cathedral
Rockefeller Center
Cathedral of St. John the Divine
N.Y. County Courthouse
Harlem River Drive
Riverside Drive
Riverside Church
George Washington Bridge
Tri-Boro Bridge
State University of NY
Woolworth Stores
Socony-Mobil Building
Metropolitan Life Insurance
C.B.S.
Stone & Webster Building
Manufacturers Hanover Trust
Bank of New York
Dun & Bradstreet Building
Merchant Square Building
Mutual of New York
[illegible]

	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
	[illegible]
[illegible]	[illegible]
[illegible]	Central Square [illegible]
[illegible]	[illegible]
[illegible]	[illegible]
	[illegible]
	[illegible]
	[illegible]
	[illegible]
	[illegible]
	[illegible]
[illegible]	[illegible]
	[illegible]
[illegible]	[illegible]
	[illegible]
[illegible]	[illegible]

NORTH CAROLINA

[illegible]	[illegible]

OHIO

[illegible]	1st National Bank
[illegible]	White Cross Hospital
	[illegible]
Carlisle	Cumberland County [illegible]
Meadville	W. T. Grant
Cleveland	Cleveland Museum of Art

PENNSYLVANIA

Philadelphia	Annenberg School of Communications, University of Pennsylvania
	Broad Street Subway
	West Oak Lane Pumping Station
	I.S. Ravdin Inst. for the Hospital of the University of Pennsylvania
Pittsburgh	Homewood Community Mausoleum
Valley Forge	Statue of Geo. Washington

RHODE ISLAND

Pawtucket	Slater Office, Industrial Nat'l Bank
Providence	Bridge

VIRGINIA

Arlington,	John F. Kennedy Memorial
Alexandria	Masonic Memorial Temple
Roanoke	Mountain Trust Bank
	Northwest Bank

WASHINGTON

Pine Lake	Providence Heights College

WASHINGTON, D.C.

	Smithsonian Institute
	Amidon Greenleaf Elementary School
	Southwest Freeway
	Headquarters Building, United Bro. of Carpenters & Joiners of America

WEST VIRGINIA

Wheeling	Hawley Building

WISCONSIN

Milwaukee	Wisconsin Telephone Building

METRO
Municipality of Metropolitan Seattle
Exchange Building • 821 Second Ave. • Seattle, WA 98104-1598

December 3, 1986

TO: Planholders on Contract No. T/F36-86, CU04,
Westlake Station, Pine Street Line and
Convention Place Station Excavation

Elaine P. Swanson

FROM: Elaine P. Swanson, Supervisor
Contract Administration

SUBJECT: Buy America Requirements

A number of prospective bidders for this Contract have requested copies of the federal Buy America requirements applicable to this Contract or have asked questions about the scope of those requirements. In order to provide bidders with the same information that is available to the Municipality, the following documents are attached to this letter as Reference Documents:

1. Federal Register, Vol. 48, No. 180, September 15, 1983, pp. 41562 - 41567. Final Rule implementing Buy America Requirements.
2. Federal Register, Vol. 50, No. 11, January 16, 1985, p. 2289. Final Rule deleting cement from Buy America requirements.
3. Federal Register, Vol. 50, No. 85, May 2, 1985, pp. 18760 - 18761. Notice of exemption from Buy America requirements for microcomputers for a one-year period.
4. Federal Register, Vol. 51, No. 104, May 30, 1986, p. 19653. Notice of temporary extension of waiver from Buy America requirements for microcomputers.
5. Federal Register, Vol. 51, No. 118. June 19, 1986, pp. 22285 - 22287. Final Rule specifying the actual Buy America certificates that must be submitted by each bidder to indicate compliance or non-compliance with applicable Buy America requirements.

These documents should provide sufficient information for bidders about the Buy America requirements applicable to this Contract.

EPS:glp
Attachment
BAR.DOC

Attachment 4

SCOTT KIN CW

SEE JOHN MAC

US Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

400 Seventh St. S.W.
Washington, D.C. 20590

SEP 19 1986

Catherine Roach, Esq.
Preston, Thorgrimson,
Ellis and Holman
5400 Columbia Seafirst Center
701 5th Avenue
Seattle, Washington 98104-7011

Dear Ms. Roach:

This is in response to your inquiry as to whether the "Buy America" requirements of the Surface Transportation Act of 1982 (Section 165) apply to granite products that will be used in the Seattle Bus Tunnel Project.

Section 165 requires, in general, that no Federal funds may be obligated for mass transportation projects unless all steel and manufactured products used in such projects are of United States origin. It is my opinion that since granite is a mined product and does not fall under either of the categories listed in Section 165 then the "Buy America" requirements do not apply to granite products. It should be noted that Section 401 of the Surface Transportation Assistance Act of 1978 (the "old" "Buy America" requirements) did cover mined products. However, as mentioned, Section 165 does not contain language similar to that contained in Section 401.

If you have any further questions on this matter, please do not hesitate to contact me.

Sincerely,

Edward

Edward J. Gill, Jr.
Deputy Chief Counsel

cc: UMTA Region X

202 861 6819

Attachment 5

SEP 22 1986

ROBINS, ZELLE, LARSON & KAPLAN
FOUNDED IN 1938 AS ROBINS, DAVIS & LYONS
ATTORNEYS AT LAW

ATLANTA, GEORGIA
DALLAS, TEXAS
MINNEAPOLIS, MINNESOTA
NEWPORT BEACH, CALIFORNIA
SAINT PAUL, MINNESOTA
WASHINGTON, D.C.
WELLESLEY, MASSACHUSETTS

ARMY-NAVY CLUB BUILDING
SUITE 610
1627 EYE STREET, N.W.
WASHINGTON, D.C. 20006-4001
TELEPHONE (202) 861-6800
TELECOPIER (202) 861-68 9
TELEX 4931197 RZLK UI

PAMELA McCARTHY DEESE

January 7, 1987

By Hand
Edward J. Gill, Jr., Esquire
Deputy Chief Counsel
Urban Mass Transportation Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Seattle Bus Tunnel Project

Dear Ed:

As you suggested in our telephone conversation this morning, I have outlined several points which I hope you will consider in reviewing whether finished granite is subject to Buy America requirements. On September 19, 1986, you responded to an inquiry by Catherine Roach of Preston, Thorgrimson, Ellis and Holman in Seattle. Ms. Roach had requested your opinion on the application of the Buy America requirements of the Surface Transportation Assistance Act of 1982 to granite products which are specified in the Seattle Bus Tunnel Project. Your letter concluded that "since granite is a mined product and does not fall under either of the categories listed in Section 165 then the "Buy America" requirements do not apply to granite products."

Upon our review of the statute and legislative history on behalf of our client, Cold Spring Granite of Minnesota, we believe that your opinion concerning Buy America requirements may apply to raw, unfinished granite, but not to the dimensional granite products specified in the Seattle Bus Tunnel Project. The Surface Transportation Assistance Act of 1982, P.L. 97-424, Sec. 165(a), 23 U.S.C.A. §101 et seq., requires that funds can not be obligated under the Act unless "steel, cement, and manufactured products used in such project are produced in the United States." Though the Buy America requirements of section 401 of the 1978 Surface Transportation Assistance Act covered materials which were "mined, produced or manufactured in the United States," the legislative history to the amended section does not offer any guidance as to why the statutory description was modified.

The term "manufactured product" as used in the amended statute is defined as "a product produced as a result of a manufacturing process." A "manufacturing process" is defined as a process whereby an original material is changed or transformed into an article which, because of the process, is different from the original product. 49 CFR §661.3(e). Neither the statute nor the regulations specifically exclude mined products from the definition of manufactured products.

The dimensional granite products specified in the Seattle Bus Tunnel Project are the result of a significant manufacturing process performed after the granite is mined. The finished product is clearly different from the original product. Once a block of granite is quarried, it is transported to a manufacturing facility. There it undergoes a number of processes designed to transform a 627 cubic foot block of granite into commercially saleable slabs no thicker than three inches which will be used as facing on walls, ceilings and floors. At the manufacturing facility the granite is cut into slabs ranging in thickness from 1/4 inch to 3 inches, pitched, lined, pointed, hewn, sawed, dressed, mitred and polished.

As we discussed in our telephone conversation, under the U.S. trade laws, imports of granite undergoing processes as described above would be classified as manufactured articles and subject to higher rates of duty. Specifically, Customs classifies granite as follows:

Granite and articles of granite:

TSUS		DUTY
513.61	Granite, not manufactured, and not suitable for use as monumental, paving, or building stone;	FREE
	Granite, suitable for use as monumental, paving, or building stone:	
513.71	Not pitched, not lined, not pointed, not hewn, not sawed, not dressed, not polished, and not otherwise manufactured;	FREE
513.74	Pitched, lined, pointed, hewn, sawed, dressed, polished, or otherwise manufactured.	4.4%

Ironically, dimensional granite specified for the Seattle Bus Tunnel Project if imported would be classified as manufactured and subject to a 4.4 percent duty. Yet, for purposes of Buy America, the same dimensional granite products would not be considered manufactured.

In conclusion, the statute clearly requires that Buy America provisions apply to manufactured products with no exception for mined products. As the granite products specified in the Seattle Bus Tunnel Project must undergo a significant manufacturing process resulting in a product different from the original product, the Buy America requirements of the Surface Transportation Assistance Act should apply to bids for dimensional granite products.

Since the deadline for bids on the Seattle project is January 22, your immediate consideration of this matter is appreciated. I would welcome an opportunity to discuss this matter in greater detail.

Sincerely,

Pamela M. Deese

Pamela M. Deese

PMD/pma

U.S. Department
of Transportation

**Urban Mass
Transportation
Administration**

JUN 30 [illegible]

Pamela McCarthy Deese, Esq.
Robins, Zelle, Larson and Kaplan
Suite 610
1627 Eye Street, N.W.
Washington, D.C. 20006-4001

Dear Ms. Deese:

This is in response to your recent letter in which you requested that the Urban Mass Transportation Administration (UMTA) clarify and/or reconsider a previous opinion concerning the applicability of the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165, Public Law 97-424) to granite products that will be used in the Seattle Bus Tunnel Project.

In the previous opinion, issued on September 19, 1986, UMTA determined that the "Buy America" requirements do not apply to such granite products. This determination was based on the fact that the requirements of Section 165(a) apply to steel and "manufactured products," and make no mention of "mined products" such as granite. As you correctly point out in your letter, Section 401 of the Surface Transportation Assistance Act of 1978 (Public Law 95-599), which was repealed by Section 165, applied domestic preference requirements to "articles, materials, and supplies mined...in the United States." Your observation that the legislative history of Section 165 is silent as to why the reference to mined products was dropped is also correct.

The regulations which implement Section 165 (49 C.F.R. Part 661) define a "manufactured product" as "a product produced as a result of [a] manufacturing process." (Section 661.3(d)). The regulations further define "manufacturing process" as "a process whereby an original material is changed or transformed into an article which, because of the process, is different from the original product." (Section 661.2(e)).

It is my understanding that your position is that the dimensional granite products specified in the Seattle Bus Tunnel Project are produced as result of a significant manufacturing process performed after the granite is mined, and that the finished product is different from the original product thus meeting the regulatory definition of a "manufactured product." You describe the manufacturing process as one in which a mined granite block is cut into slabs, pitched, lined, pointed, hewn, sawed, dressed, mitred and polished.

To support your position, you have also indicated that imported granite that undergoes the processes described above is classified as a "manufactured product" for purposes of imposition of tariff duties and is subject to a different duty than imported granite that is not subject to the processes described above. As you correctly point out, this could result in the apparent inconsistent application of Federal requirements. You should note that there are other products (e.g. contact rail) which are subject to duties as one type of equipment, and yet subject to UMTA "Buy America" requirements as another type of equipment.

Therefore, while your argument concerning duties raises an interesting question, I believe that the sole question that must be addressed is whether the processes in which the granite block is cut, pitched, lined, pointed, hewn, sawed, dressed, mitred and polished are such "manufacturing" processes which, upon their completion, produce a granite slab which is a "manufactured product" rather than a mined product.

It is my opinion that the processes so described are sufficient "manufacturing" processes as defined by the "Buy America" regulations to make the granite slab a "manufactured product" for the purposes of the applicability of the domestic preference requirements set forth in Section 165(a) of the Surface Transportation Assistance Act of 1982. It should be noted that this determination can be distinguished from the prior determination in that if a mined granite block were to be used in a mass transportation project, the "Buy America" requirements would not apply since the block would be a mined product not subject to any "manufacturing process."

If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Edward J. Gill, Jr.

Edward J. Gill, Jr.
Deputy Chief Counsel

cc: Catherine Roach, Esq.
Preston, Thorgrimson, Ellis
and Holman

UMTA Region X

Seattle Metro

John Maile
Cold Springs Granite Co
Cold Spring, MN
56320

Vicki Scuri
6712 Division NW
Seattle, WA
98117

March 10, 1987

Dear John,

It has been most wonderful working with you and Cold Springs Granite Company. I am currently finishing up the contract documents for University Street Station. When I think back to where the project started and where it is now, even I am amazed. I can't thank you enough for your help with determining the appropriate granites. All of those samples really helped me to visualize the Station. I could not have done it without your assistance and the generosity of your company. Rollie Barthelemy played a key role in the development of the graphics. Again, without Rollie's efforts in developing the prototypes it is unlikely that the concept would have survived. He did a most amazing job of interpretting the graphics. I am most impressed with his skills. Also, the graphics have been very well received by everybody who has seen them. I will be showing some of the work this month at Seattle Pacific University, and next month at the Bellevue Art Museum, as part of an overview of design work in Seattle, over the past 15 years. It is most exciting. The Project is really beginning to acquire momentum.

Once again, many thanks for all of your assistance with materials, specifications and graphics. I hope to see you again soon.

Sincerely,

Vicki Scuri

Attachment 8

MUNICIPALITY OF METROPOLITAN SEATTLE
King County, Washington
DOWNTOWN SEATTLE TRANSIT PROJECT
CONTRACT NO. RFB 87-0114
FINISHED STONE FOR CU03B
PART D
ADDENDUM NO. 1

Prospective bidders are hereby notified that the bidding documents of said Contract have been amended as hereinafter set forth:

Ref.	Section and Page	Location and Description of Change
		Part A - Legal and Procedural Requirements for Bidders
1.001	2-22 P. 25	Add the following subsection: "2-22 Prohibition on South African Products Pursuant to Resolution No. 5250 of the Municipality, products manufactured or fabricated in the Republic of South Africa shall not be acquired for installation or construction under this Contract. By submitting a bid, the bidder has thereby covenanted that it shall not include such prohibited products in the performance of the work under this Contract."
1.002	Attch. B P. 40	Change item 11 in Attachment B "Bid Submittal Form" - Bid schedule to read as follows: "Split face slabs GV - 31"

Attachment 9

Ref.	Section and Page	Location and Description of Change
		PART B - TECHNICAL SPECIFICATIONS
1.003	04450-5	Paragraph 2.01-A.3.g.1): DELETE paragraph and INSERT the following: "DTC, "Rosso Santiago"."
1.004	04450-5	Paragraph 2.01-A.3.h.1): DELETE paragraph and INSERT the following: DELETES [illegible] [illegible] "Tileworks, "Southern Black Granite"." FOREGN
1.005	09600-4	Paragraph 2.01-A.3.h.1): DELETE paragraph and INSERT the following: "DTC, "Rosso Santiago"."
1.006	09600-5	Paragraph 2.01-A.3.j.2): DELETE paragraph and INSERT the following: "Tileworks, "Southern Black Granite"."

MUNICIPALITY OF METROPOLITAN SEATTLE

King County, Washington

DOWNTOWN SEATTLE TRANSIT PROJECT

CONTRACT NO. RFB 87-0114

FINISHED STONE FOR CU03B

PART D

ADDENDUM NO. 2

RECEIVED
JAN 2 [illegible]
COLD SPRING [illegible]

Prospective bidders are hereby notified that the bidding documents of said Contract have been amended as follows:

Ref.	Section and Page	Location and Description of Change
		PART B - TECHNICAL SPECIFICATIONS The following materials have been approved for use in addition to those specified: ⇒ NOTE
2.001	04450-4	d. GV-9 Red: 4) Dal-Tile/Porcelli Marmi "Red Balmoral" FOREIGN 5) City Ceramic/Quadra Stone Co. "Stacia Red"
2.002	04450-4	e. GV-10 Pink: 3) Dal-Tile/Porcelli Marmi "Pink Porrina" 4) Tileworks/SDI Co. R.O.K. "Pink Crystal" FOREIGN
2.003	04450-5	f. GV-11 Gray: 4) City Ceramic/Quadra Stone Co. "Rosa Del Salto" FOREIGN
2.004	04450-5	g. GV-20 Red: 4) Dal-Tile/Porcelli Marmi "Sierra Chica" FOREIGN
2.005	04450-5	h. GV-21 Black: 4) Dal-Tile/Porcelli Marmi "Black K" FOREIGN 5) City Ceramic/Quadra Stone Co. "Crystal Black"
2.006	04450-5	i. GV-23 Speckled: 4) Dal-Tile/Porcelli Marmi "Rosa Beta" FOREIGN

Ref.	Section and Page	Location and Description of Change
2.007	04450-5	k. GV-31 Light Gray: 5) Dal-Tile/Porcelli Marmi "White Sardenga FOREIGN 6) Tileworks/SDI Co., R.O.K. "Moody Gray" 7) Tileworks/SDI Co., R.O.K. "Mysterious Gray Swirl" ? 8) Tileworks/SDI Co., R.O.K. "Twilight Zone" 9) City Ceramic/Quadra Stone Co. "Cascade White" FOREIGN
2.008	09600-3	d. GP-1 Light Gray: 5) Dal-Tile/Porcelli Marmi "White Sardenga" FOREIGN 6) City Ceramic/Quadra Stone Co. "Cascade White" FOREIGN 7) Tileworks/SDI Co., R.O.K. "Mysterious Gray Swirl" 8) Tileworks/SDI Co., R.O.K. "Twilight Zone"
2.009	09600-4	e. GP-10 Charcoal: 4) Dal-Tile/Porcelli Marmi "Black Impala" FOREIGN 5) City Ceramics/Quadra Stone Co. Crystal Black" FOREIGN 6) Tileworks/SDI Co., R.O.K. "Sparkling Sunrise"
2.010	09600-4	f. GP-11 Red: 4) Dal-Tile/Porcelli Marmi "Red Vanga" FOREIGN
2.011	09600-4	g. GP-13 Black: 4) Dal-Tile/Porcelli Marmi "Black Impala" FOREIGN 5) City Ceramics/Quadra Stone Co. Crystal Black" FOREIGN
2.012	09600-4	h. GP-18 Red: 4) Dal-Tile/Porcelli Marmi "Sierra Chica" FOREIGN
2.013	09600-4	i. GP-21 19 Black: 4) Dal-Tile/Porcelli Marmi "Rosa Beta" FOREIGN
2.014	09600-4,5	j. GP-21 Black: 4) Dal-Tile/Porcelli Marmi "Black K" FOREIGN 5) City Ceramics/Quadra Stone Co. "Crystal Black" FOREIGN
2.015	09600-5	k. GP-27 Medium Green: 2) Surfaces and Systems, "Verde Fontain" FOREIGN 3) Surfaces and Systems, "Verde Veneziano" FOREIGN

MUNICIPALITY OF METROPOLITAN SEATTLE

King County, Washington

DOWNTOWN SEATTLE TRANSIT PROJECT

CONTRACT NO. RFB 87-0114

FINISHED STONE FOR CU03B

PART D

ADDENDUM NO. 3

RECEIVED
JAN 2 1 1988
COLD SPRING GRANITE

Prospective bidders are hereby notified that the bidding documents of said Contract have been amended as follows:

Ref.	Section and Page	Location and Description of Change
		PART B - TECHNICAL SPECIFICATIONS The following materials have been approved for use in addition to those specified:
3.001	09600-4	Correction to Item 2.013 in Addendum No. 2, Change to read as follows: "1. GP-19 Speckled:"
3.002	09600-5	Add the Following: GP-27 Medium Green: 4) City Ceramic/Quadra Stone Co. "Laurentide Green" (In advertently omitted from Addendum No. 2)

FOREIGN

January 8, 1988

Mr. Al Pelton, MS-71
Municipality of Metropolitan Seattle
821 Second Avenue, Exchange Building
Seattle, WA 98104

Ref: Downtown Seattle Transit CU038

Dear Mr. Pelton:

Please refer to Addendum No. 1, Page 2. Please notice the granite types are being changed. In the original specifications, five groups of the specified granites do not contain at least one American product. Addendum No. 1 further complicates domestic bidding.

In our telephone conversation of January 7, 1988, you indicated an additional addendum was forthcoming which would change the thickness tolerance to a more stringent one. This would be contrary to the domestic industry standard.

We suggest all granite groups contain at least one domestic granite. We also suggest domestic industry standards of architectural granite apply.

Since this is a "buy American" project, we believe these suggestions are important.

Our concerns are that, at this time: the specifications indicate a protest would be appropriate by the domestic suppliers. Also, the possibility of a "no bid response" by the domestic suppliers is great. When the foreign bidders realize that, you will see inflated bids.

Sincerely,

COLD SPRING GRANITE COMPANY

J. W. Maile

J. W. Maile

JM:bn

Attachment 10

COLD SPRING GRANITE COMPANY/COLD SPRING, MINN. 56320/TEL. 612-685-362
[illegible] (OUT OF STATE TOLL FREE 800-328-7039)

Seattle
Transit
Project

CONTRACT NO. [illegible]

[illegible]

Attachment 11

1.06 DELIVERY, STORAGE AND HANDLING

A. Protect stone and accessories during storage and construction against moisture, soiling, staining and physical damage.

B. Handle stone to prevent chipping, breakage, soiling or other damage. Do not use pinch or wrecking bars without protecting edges of stone with wood or other rigid materials. Lift with wide-belt type slings wherever possible; do not use wire rope or ropes containing tar or other substances which might cause staining. If required, use wood rollers and provide cushion at end of wood slides.

C. Store stone on wood skids or pallets, covered with non-staining, waterproof membrane. Place and stack skids and stones to distribute weight evenly and to prevent breakage or cracking of stones. Protect stored stone from weather with waterproof, non-staining covers or enclosures, but allow air to circulate around stones.

D. Protect stonework accessories from weather, moisture and contamination from other foreign materials.

1.07 SEQUENCING AND SCHEDULING

A. At PSS and USS, to allow for deflection of concrete roof structure, do not install stone veneer systems until backfill over concrete roof structure has been placed to finish grade above.

PART 2 PRODUCTS

2.01 STONE MATERIALS

A. Granite:

1. Furnish granite of colors and finishes indicated for each area of use. Comply with requirements of ASTM C 615, Architectural Grade, and National Building Granite Quarries Association, Inc. (NBGQA) for color and finish qualities.
2. Granite need not comply with Buy American requirements.
3. Provide the following colors for Granite Veneer units indicated on schedule, specified by color and quarry or distributor. Granite shall match control sample on file at Engineer's office for color pattern and finish texture.

2.01 continued

a. CV-9 Red:

1) Cold Springs, "Sunset Red".
2) Cold Springs, "Prairie Mountain".
3) Tileworks, "Rosso Balmoral".

b. CV-11 Grey:

1) Cold Springs, "Diamond Pink".
2) Cold Springs, "Rockville Beige".
3) Cold Springs, "Texas Pearl".

c. CV-12 Charcoal:

1) Cold Springs, "Charcoal Black".
2) D.T.C., "Dark Gray".
3) Cold Springs, "Academy Black".

d. CV-15 Dark Red:

1) Cold Springs, "Carnelian".
2) Cold Springs, "Dakota Red".

e. CV-20 White:

1) Tile Works, "Select White".
2) Surfaces and Systems, "Luna Pearl."
3) Rock of Ages, "Bethel White" → Br No Bc

f. CV-21 Black:

1) Cold Springs, "Cold Springs Black".
2) Tileworks, "Black Andes".
3) Tileworks, "Absolute Black".

g. CV-22 Dark Gray:

1) Cold Springs, "Charcoal Black".

2.01 continued

2) Tileworks, "Impala Black".

3) Cold Springs, "Academy Black".

h. GV-23 Speckled:

1) Cold Springs, "Rockville White".

2) Cold Springs, "Rockville Beige".

i. GV-24 Pink:

1) Tile Works, "Oklahoma Pink".

2) Tile Works, "Charlie Brown".

3) Cold Springs, "Lac Du Bonnet".

GV-30 [illegible]
GV-30 GRAY, [illegible]
GV-31 LT GRAY [illegible]

j. GV-10 Pink:

1) Dal Tile, "Sweet Pink".

2) Cold Springs, "Sunset Beige".

k. GV-29 Medium Green:

1) Cold Springs, "Cold Springs Green".

4. Provide the following finishes for Granite Veneer units indicated on schedule:

[illegible] Cleaned Honed: Very smooth, but not glossy surface. Grade of honing to match control sample, Diamond 8.

[illegible] Polished: High gloss surface.

[illegible] Thermal: Flat surface treated with high temperature flame, producing a regular plane of rough texture.

[illegible] Cleaned honed with water jet.

[illegible] Photostencil Sandblast.

[illegible] Rubbed and sanded.

B. Marble:

1. Furnish marble of kind, color and finish indicated for each area of use. Comply with requirements of ASTM C 503 and Marble Institute of America (MIA).

2.01 continued

2. Marble need not comply with Buy American requirements.

3. Provide the following colors for Marble Veneer units indicated on schedule, specified by color and quarry or distributor. Marble shall match control sample on file at Engineer's office for color pattern and finish texture.

    a. MV-2 White:

        1) Georgia Marble, "Cherokee".

        2) Surfaces and Systems, "Cherokee".

        3) Surfaces and Systems, "Pearl Gray".

2.02 MORTAR AND GROUT

A. Provide portland cement, ASTM C 150. Furnish Type I, except Type III may be used for setting stonework in cold weather.

B. Hydrated lime, ASTM C 207, Type S.

C. Sand, ASTM C 144.

D. Water, clean and potable.

2.03 METAL SUPPORT SYSTEM

A. Components:

1. Provide miscellaneous rolled or formed components, including furring, struts, other intermediate construction necessary to provide anchorage to structure.

2. Hot rolled steel sections shall comply with requirements of Section 05500.

3. Cold formed framing shall comply with requirements of Section 05400.

B. Hot-dip galvanize all components with zinc coating, ASTM A 123, 1.25 ounces minimum coating thickness.

C. Fabricate support system to allow for adjustment to structure, and to accommodate adjustment of anchorage devices from stone units.

PART 2 PRODUCTS

2.01 STONE MATERIALS

A. Granite Pavers:

1. Provide granite of kind, color and finish indicated for each area of use, complying with ASTM C 615, Architectural Grade. ~~and~~ NBGQA Specifications for Building Granite.
2. Granite need not comply with Buy American requirements.
3. Provide the following colors for Granite Paver units indicated on schedule, specified by color and quarry or distributor. Tile shall match control sample on file at Engineer's office for color pattern and finish texture.
    - a. GP-1 Light Gray:
        - 1) Cold Springs, "Sierra White".
        - 2) Dal Tile, "Pearl White".
        - 3) Tile Works, "Select White".
        - 4) North American Industries, Inc., "Mt. Airy".
    - b. GP-10 Charcoal:
        - 1) Cold Springs, "Charcoal Black".
        - 2) Cold Springs, "Academy Black".
        - 3) D.T.C., "Dark Gray".
    - c. GP-11 Red:
        - 1) Tileworks, "New Imperiale". 122 N.C
        - 2) Surfaces and Systems, "Rosso Imperiale".
        - 3) D.T.C., "Red Vanga".
    - d. GP-13 Black:
        - 1) Cold Springs, "Academy Black".
        - 2) D.T.C., "Black" (Light), "African Impalla".
        - 3) Cold Springs, "Charcoal Black".

+ 4[illegible]
72

2.01 continued

e. GP-17 White:

1) Tile Works, "Select White".

~~2) Surfaces and Systems~~, "Luna Pearl",

3) Rock of Ages, "Bethel White".

f. GP-18 Pink:

1) Tile Works, "Oklahoma Pink".

2) Tile Works, "Charlie Brown".

3) Cold Springs, "Lac Du Bonnet".

g. GP-19 Speckled:

1) Cold Springs, "Rockville White".

2) Cold Springs, "Rockville Beige".

h. GP-21 Black:

1) Tileworks, "Black Andes".

2) Cold Springs, "Cold Springs Black".

3) Tileworks, "Absolute Black".

i. GP-27 Medium Green:

1) Cold Springs, "Cold Spring Green".

j. GP-28 Pink:

1) Cold Springs, "Osage".

k. GP-29 Light Gray: ELU

1) Rock of Ages, "Woodbury". 50

4. Provide the following finishes for Granite Paver units indicated on schedule:

a. Cleaned Honed Diamond 8: Very smooth, but not glossy surface. Grade of honing to match control sample.

b. Polished: High gloss surface.

2.01 continued

c. **Thermal:** Flat surface treated with high temperature flame, producing a regular plane of rough texture.

2.02 SETTING MATERIALS

A. Provide portland cement, ASTM C 150, Type I, except complying with staining requirements of ASTM C 91 for not more than 0.03% water soluble alkali.

B. Hydrated lime, ASTM C 207, Type S.

C. Aggregate, ASTM C 144, non-staining, except graded with 100% passing the No. 16 sieve for 1/4" and narrower joints.

D. Pure mineral or synthetic pigments, resistant to alkalies and non-fading, suitably compounded for use in grout mixes.

E. Water, clear and free of deleterious materials which would impair the work.

F. Grout color shall be black.

2.03 MISCELLANEOUS MATERIALS

A. 4 mil thick polyethylene film, for cleavage membrane.

B. Setting bed reinforcement, galvanized welded wire fabric, 2" x 2" - W0.3 x W0.3 (16 ASW gage or 0.0625" diam.); comply with ASTM A 185 and ASTM A 82 except for minimum wire size.

C. Premolded joint filler, rigid foamed urethane, polyvinyl, or polyethylene, 1/2" thick, width as required to bring top to within approximately 3/4" of top of stone flooring.

D. Provide stone cleaners of proper formulation for kinds of stones, finishes and applications indicated, as recommended by stone producer. Do not use acid-type cleaning agents or other cleaning compounds containing caustic or harsh fillers, except where expressly approved by stone producer for type of condition involved.

E. Provide metal stone anchors of type and size required to securely anchor and fasten stone steps in place.

   1. Fabricate ties and other accessories from hot-dip galvanized steel.

DSTP-PB CATALOG NO. CU03C.01

METRO
Municipality of Metropolitan Seattle
Downtown
Seattle
Transit
Project

CONTRACT NO. RFB 87-0114

CONTRACT DOCUMENTS
VOLUME 1 OF 2

PARTS A & B
SPECIFICATIONS

FINISHED STONE
FOR CUO3B

Attachment 12

[illegible]

DEC. 1987

& DOUGLAS INC.

PART 2 PRODUCTS

2.01 STONE MATERIALS

A. Granite:

1. Furnish granite conforming to the following minimum standards:

ASTM C 97	Absorption	< = 0.4%
ASTM C 97	Density	> = 160 pcf
ASTM C 170	Compressive Strength	> = 19,000 psi
ASTM C 99	Modulus of Rupture	> = 1,500 psi

2. Furnish granite free of cracks, and of colors and finishes indicated for each area of use. Comply with requirements of ASTM C 615, Architectural Grade, and National Building Granite Quarries Association, Inc. (NBGQA) for color and finish qualities.

3. Provide the following colors for Granite Veneer units indicated on the following schedule, specified by color and quarry or distributor. Granites selected for each color below are not ranked by priority, all are equally acceptable. Granite provided shall be:

    a. As indicated below, or

    b. As an approved substitution as described in the stone procurement contract pre-bid substitution provision, or

    c. As approved by the Engineer for color match with control sample for color pattern and finish texture, following award of CU03B contract as described in Section 00710 General Conditions of CU03B Contract Documents.

    d. GV-9 Red:

        1) Cold Springs, "Sunset Red". PRICE

        2) Cold Springs, "Prairie Mountain".

        3) Tileworks, "Rosso Balmoral".

    e. GV-10 Pink:

        1) Dal Tile, "Sweet Pink".

2.01 continued

2) Cold Springs, "Sunset Beige". [illegible]

f. GV-11 Grey:

1) Cold Springs, "Diamond Pink".

2) Cold Springs, "Rockville Beige". [illegible]

3) Cold Springs, "Texas Pearl".

g. GV-20 Red: [illegible]

1) DTC, "Red Sierra Chica". [illegible]

2) DTC, "Red Karlea".

3) Tileworks, "Red Magnum".

h. GV-21 Black:

1) Cold Springs, "Cold Springs Black". [illegible]

2) Tileworks, "Black Andes".

3) Tileworks, "Absolute Black".

i. GV-23 Speckled:

1) DTC, "Rosa Antico".

2) DTC, "Ghindone". [illegible]
DEER ISLE

3) DTC and Tileworks, "Rosa Beta".

j. GV-30 Gray:

1) Thompson Tile Co., "Rosa Dante".

2) Cold Springs, "Texas Pearl". [illegible]

k. GV-31 Light Gray:

1) Cold Springs, "Sierra White". [illegible]

2) Dal Tile, "Pearl White".

3) Tile Works, "Select White".

4) North American Industries, Inc. "Mt. Airy".

2.01 continued

4. Provide the following finishes for Granite Veneer units indicated on schedule:

   a. Cleaned Honed: Very smooth, but not glossy surface. Grade of honing to match control sample.

   b. Polished: High gloss surface.

   c. Thermal: Flat surface treated with high temperature flame, producing a regular plane of rough texture.

   d. Provide polished surface for stone to receive Photo-Stencil Sandblast finish by the Prime Contractor.

B. Marble:

1. Furnish marble of kind, color and finish indicated for each area of use. Comply with requirements of ASTM C 503 and Marble Institute of America (MIA).

2. Provide the following colors for Marble Veneer units indicated on the following schedule, specified by color and quarry or distributor. Marble selected for each color below are not ranked by priority, all are equally acceptable. Marble provided shall be:

   a. As indicated below, or

   b. As an approved substitution as described in the stone procurement contract pre-bid substitution provision, or

   c. As approved by the Engineer for color match with control sample for color pattern and finish texture, following award of CU03B contract as described in Section 00710 General Conditions of CU03B Contract Documents.

   d. MV-2 White:

404-735-2591
JIM HAZELW[illegible]
GEO [illegible]

      1) Georgia Marble, "Cherokee".

      2) Surfaces and Systems, "Cherokee".

      3) Surfaces and Systems, "Pearl Gray".

3. Provide the following finishes for Marble Veneer units indicated on schedule:

   a. Cleaned Honed: Very smooth, but not glossy surface. Grade of honing to match control sample.

1.05 continued

C. Store stone on wood skids or pallets, covered with non-staining, waterproof membrane. Place and stock skids and stones to distribute weight evenly and to prevent breakage or cracking of stones. Protect stored stone from weather with waterproof, non-staining covers or enclosures, but allow air to circulate around stones.

PART 2 PRODUCTS

2.01 STONE MATERIALS

A. Granite Pavers:

1. Furnish granite conforming to the following minimum standards:

ASTM C 97	Absorption	< = 0.4%
ASTM C 97	Density	> = 160 pcf
ASTM C 170	Compressive Strength	> = 19,000 psi
ASTM C 99	Modulus of Rupture	> = 1,500 psi

2. Provide granite of kind, color and finish indicated for each area of use, complying with ASTM C 615, Architectural Grade, and NBGQA Specifications for Building Granite.

3. Provide the following colors for Granite Paver units indicated on the following schedule, specified by color and quarry or distributor. Granites selected for each color below are not ranked by priority, all are equally acceptable. Granite provided shall be:

    a. As indicated below, or

    b. As an approved substitution as described in the stone procurement contract pre-bid substitution provision, or

    c. As approved by the Engineer for color match with control sample for color pattern and finish texture, following award of contract as described in Section 00710 General Conditions of CU033 Contract Documents.

    d. GP-1 Light Gray:

        1) Cold Springs, "Sierra White".

2.01 continued

2) Dal Tile, "Pearl White".

3) Tile Works, "Select White".

4) North American Industries, Inc., "Mt. Airy".

e. GP-10 Charcoal:

1) Cold Springs, "Charcoal Black".

2) Cold Springs, "Academy Black". PRICE

3) D.T.C., "Dark Gray".

f. GP-11 Red:

FROM INDIA

1) Tileworks, "New Imperiale". RIGHT RED

2) Surfaces and Systems, "Rosso Imperiale".

3) D.T.C., "Red Vanga". ← PRICE THIS.

g. GP-13 Black:

1) Cold Springs, "Academy Black". ← PRICE

2) D.T.C., "Black" (Light), "African Impalla".

3) Cold Springs, "Charcoal Black".

h. GP-18 Red:

ROSSA [illegible] RED

1) DTC, "Red Sierra Chica". ← PRICE THIS [illegible] ~~SUBSTITUTE~~

2) DTC, "Red Kalea".

3) Tileworks, "Red Magnum".

i. GP-19 Speckled: GOLDEN SIERRA

1) DTC, "Rosa Antico".

2) DTC, "Chindona". ← SUBSTITUTE PRICE DEER ISLE

3) DTC and Tileworks, "Rosa Beta".

j. GP-21 Black:

1) Tileworks, "Black Andes".

2.01 continued

2) Cold Springs, "Cold Springs Black".

3) Tileworks, "Absolute Black".

k. GP-27 Medium Green:

1) Cold Springs, "Cold Spring Green".

4. Provide the following finishes for Granite Paver units indicated on schedule:

a. Cleaned Honed: Very smooth, but not glossy surface. Grade of honing to match control sample.

b. Polished: High gloss surface.

c. Thermal: Flat surface treated with high temperature flame, producing a regular plane of rough texture.

2.02 FABRICATION

A. Fabricate stone as shown and as detailed on final shop drawings to comply with recommendations of applicable stone association. Cut and backcheck as required for proper fit and clearance.

B. Cut stone accurately to shape and dimension indicated on final shop drawings, maintaining fabrication tolerances of applicable stone associations listed.

1. Dress joints straight and at 90 degree angle with face, unless otherwise indicated.

2. Cut to provide joint widths as indicated or, if not indicated, cut to allow for uniform 1/4" wide joint.

C. Provide stone of 1-1/8" minimum thickness unless otherwise indicated. Saw cut or roughly dress back of stone so that increase in thickness from that indicated does not exceed 1/4", unless otherwise indicated.

D. Fabricate stone pavers to form patterns indicated.

E. Fabricate stone trim to profiles and dimensions indicated.

F. Include stone base (cove), fabricated to profile and details shown.

METRO
Municipality of Metropolitan Seattle
Exchange Building • 821 Second Ave • Seattle, WA 98104-1598

rec 12/29/87 jmw

RECEIVED
DEC 28 1987
COLD SPRING GRANITE

December 21, 1987

To All Prospective Bidders

Re: DSTP Contract CU03B
RFB 87-0114
Supply and Delivery of Finished Stone

On December 18, 1987, Metro received a letter from the Adolfo Forti Company requesting Metro to pursue a public interest waiver of the Buy America requirements for this contract. Metro currently intends to formally file a waiver request on January 6, 1988. If your company would also like to file comments with Metro on this issue, please submit your remarks in writing to Metro not later than 5:00 p.m. on January 6, 1988.

Sincerely,

Alan M. Pelton
Buyer, Purchasing - Mail Stop 71

AMP:pjo:022

SCOTT CAN WE FIGHT THIS
THIS IS A MILLION $ MAJOR
GRANITE CONTRACT

P.S. I WILL BE IN SEATTLE
JAN 12TH FOR A
[illegible] MEETING ON
THIS CONTRACT.

Attachment 13

G

ROBINS, ZELLE, LARSON & KAPLAN
FOUNDED IN 1938 AS ROBINS, DAVIS & LYONS
ATTORNEYS AT LAW

ATLANTA, GEORGIA
DALLAS, TEXAS
MINNEAPOLIS, MINNESOTA
NEWPORT BEACH, CALIFORNIA
SAINT PAUL, MINNESOTA
WASHINGTON, D.C.
WELLESLEY, MASSACHUSETTS

ARMY-NAVY CLUB BUILDING
SUITE 610
1627 EYE STREET, N.W.
WASHINGTON, D.C. 20006-4001
TELEPHONE (202) 861-6800
TELECOPIER (202) 861-6819
TELEX 493197 RZLK

PAMELA McCARTHY DEESE

January 4, 1988

Mr. Alan Pelton
Buyer, Purchasing - Mail Stop 71
METRO
Exchange Building
821 Second Avenue
Seattle, WA 98104-1598

Re: Bus Tunnel Project - Buy America Requirements

Your Ref: DSTP Contract CU03B
RFB 87-0114
Supply and Delivery of Finished Stone

Dear Mr. Pelton:

Pursuant to your memorandum of December 21, 1987, concerning a public interest waiver of the Buy America requirements in the above referenced project, Cold Spring Granite Company of Cold Spring, Minnesota, hereby submits its opposition to any waiver of the Buy America requirements for finished granite.

The federal regulations which govern the Buy America requirements of the Surface Transportation Assistance Act of 1982, 49 C.F.R. §661 (1986), set forth the circumstances under which exceptions to the Buy America requirements apply. Based on the information available to Cold Spring Granite Company, none of the exceptions articulated in either the statute or the federal regulations are applicable to a bid on finished granite in the instant procurement.

The first statutory exception applies when application of the Buy America requirements would be inconsistent with the public interest. The regulations state further that "in determining whether this exception will be granted, the

Administrator will consider all appropriate factors on a case by case basis..." 49 C.F.R. §661.7(b) (1986). The finished granite at issue is manufactured by several large domestic manufacturers including the Cold Spring Granite Company. Moreover, the Cold Spring Granite Company submitted a timely bid to supply the finished granite for this project. Finally, it is clearly in the public interest to utilize a domestic supplier of the finished granite who stands ready, willing and able to produce the granite at a fair and competitive price. There are no other facts of which Cold Spring Granite Company is aware that could possibly justify a determination that the Buy America requirements would be inconsistent with the public interest.

The second statutory exception provides for the waiver of Buy America requirements "if materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality." The regulations state further that these conditions will be presumed to exist if "no responsive and responsible bid is received offering an item produced in the United States." 49 C.F.R. §661.7(c) (1986). This condition for a waiver is similarly not met because of the submission by Cold Spring Granite Company of a "responsive and responsible bid" which offered an item produced in the United States. There is no evidence that the quantity or quality of finished granite offered by the Cold Spring Granite Company is not reasonably or sufficiently available.

The third statutory exception applies if the inclusion of domestic material will increase the cost of the "overall project contract by more than . . . 25 percent." 49 C.F.R. §661.7(d) (1986). There is no evidence that inclusion of domestic finished granite would increase the cost of the "overall project contract" by more than 25 percent, therefore, this exception cannot apply.

In the review of this matter, and in consideration of the public interest, you should also take into account the fact that on July 28, 1987, the Ad Hoc Granite Trade Group, an association of domestic granite manufacturers which includes Cold Spring Granite Company, filed an antidumping and countervailing duty petition with the U.S. Deparment of Commerce and the U.S. International Trade Commission. The petition alleges that imports of finished granite from Italy and Spain are both benefitting from government subsidies and being sold in the United States at less than fair value thereby causing injury to the domestic industry.

On September 9, 1987, the U.S. Interanational Trade Commission unanimously determined that there is a reasonable indication of injury to the domestic industry as a result of sales at less than fair value and government subsidies. The Department of Commerce preliminarily determined on December 24, 1987, that some finished granite imports from Spain and Italy are benefitting from government subsidies. Though Italian subsidies were found to be de minimis, most finished granite imports from Spain will pay an additional duty of 2.51 percent. The Commerce Department is continuing its countervailing duty investigation and will make a final decision regarding Spanish and Italian subsidies sometime in April. A preliminary determination in the antidumping investigation is anticipated on February 23, 1988. As a point of reference, the petition alleged dumping margins of more than 200 percent. Further, any penalty duties must be paid by the domestic importer. A final determination regarding the extent of less than fair value sales should be rendered no later than July 7, 1988

In conclusion, any waiver of the Buy America requirements for finished granite clearly would be contrary to the public interest. Should you have any questions concerning this matter, please contact either Charles R. Johnston or the undersigned, serving as counsel to Cold Spring Granite Company.

Sincerely,

Pamela M Deese

Pamela M. Deese

cc: R. Scott Rinn
Cold Spring Granite Company
Edward J. Gill, Jr.
Deputy Chief Counsel
Urban Mass Transportation Administration

ROBINS, ZELLE, LARSON & KAPLAN
FOUNDED IN 1938 AS ROBINS, DAVIS & LYONS
ATTORNEYS AT LAW

ATLANTA, GEORGIA
DALLAS, TEXAS
MINNEAPOLIS, MINNESOTA
NEWPORT BEACH, CALIFORNIA
SAINT PAUL, MINNESOTA
WASHINGTON, D.C.
WELLESLEY, MASSACHUSETTS

ARMY-NAVY CLUB BUILDING
SUITE 610
1627 EYE STREET, N.W.
WASHINGTON, D.C. 20006-4001
TELEPHONE (202) 861-6800
TELECOPIER (202) 861-6819
TELEX 4931197 RZLK UI

PAMELA McCARTHY DEESE

January 4, 1988

Edward J. Gill, Jr., Esquire
Deputy Chief Counsel
Urban Mass Transportation Administration
400 Seventh Street, N.W.
Washington, D.C. 20590

Re: Seattle Bus Tunnel Project

Dear Ed:

It was a pleasure speaking with you this afternoon. I appreciate your responsiveness on such short notice. After we spoke, I prepared the enclosed response to the Seattle METRO request for comments concerning the waiver of Buy America requirements for the purchase of finished granite.

For your additional information, I am also enclosing the METRO's request to all bidders. Should you receive a formal waiver request in this matter, I would greatly appreciate a call from you.

Should you have any questions, do not hesitate to call. Hope your new year is happy.

Sincerely,

Pamela M. Deese

Pamela M. Deese

Attachment 15

METRO
Municipality of Metropolitan Seattle
Exchange Building • 821 Second Ave • Seattle, WA 9810

F

January 07, 1968

Mr. Edward J. Gill, Jr.
Deputy Chief Counsel
Urban Mass Transportation Administration
400 Seventh Street S.W.
Washington, D.C. 20590

Re: WA-03-0059 - Downtown Seattle Transit Project Contract CU03B No. 87-0114, Finished Stone request for a waiver of the "Buy America" Requirement.

Dear Mr. Gill:

The Municipality of Metropolitan Seattle has recently issued a Request for Bid No. 87-0114 for the Finished Stone Materials associated with the Downtown Seattle Transit Project. As the attached correspondence indicates, several potential bidders have requested that Seattle Metro pursue a public interest waiver of the Buy America requirement.

I would be available to request any additional information you may require from the petitioning bidders or, if it would be more expeditious, please feel free to contact them directly. I would appreciate receiving copies of any correspondence.

The bid opening is January 26, 1988. A response before that date would be very useful.

Sincerely,

Jane Elder Bogle

Jane Elder Bogle
Grants Administrator

Enclosures

cc:Rick Ramon - UMTA, Seattle
Alan Pelton - Metro, Purchasing

AF

s. p. a. adolfo forti marmi

capitale sociale lit 900 000 000 - produzione marmi e graniti grezzi e lavorati

December 12, 1987

Mr. Al Pelton
Metro - Mail Stop 71
821 2nd Ave
Seattle, WA 98104

Re: Request for Waiver, Buy America Clause

Greetings,

In the best interest of the American public, it would be wise for competitive bidding sake, to waive the Buy-America clause in your upcoming granite bids on 26 January 1988.

Most of the granite materials specified are from a single source and we are fully aware that European pricing could be more competitive if allowed to stand on the same playing field.

Regards,

Don Seehusen
250 Bobwhite Court #200
Boise, ID 83706

Stone
pane

January 4, 1988

Mr. Alan M. Pelton
Buyer-Purchasing
Metro
Municipality of Metropolitan Seattle
Exchange Building
821 Second Avenue
Seattle, WA 98104-1598

Re: Request for Waiver Buy American Clause

Dear Mr. Pelton:

In the best interests of the citizens of Metropolitan Seattle and the management of these public interests, we respectfully request you to waive the Buy American clause to your DSTP Contract CU03B; RFB 87-0114, Supply and Delivery of finished stone.

Current specification is primarily from a single source thereby reducing competitive bidding practices.

Very truly yours,

STONE PANELS, INC.

R.L. Fleisch

R.L. Fleisch
Vice President Marketing

RLF:cm

DAL-TILE CORPORATION

1-5-88

Mr. Alan Pelton - Buyer, Purchasing
METRO - Mail Stop 71
821 2nd Ave.
Seattle, Wa. 98104-1598

Re: Downtown Transit Project - DSTP Contract CUC33
RFB 87-0114, Supply and Delivery of Finished Stone

Dear Mr. Pelton:

As you know, Dal-Tile Corporation is one of the leading manufacturer and suppliers of ceramic tile and natural stone products in the Unit States.

After careful review of all documents involved for the contract referenced above, we feel it would be in the public's interest if the "Buy America" clause could be waived. The use of foreign materia on this project would be cost effective and insure "on time" deliver

Dal-Tile Corporation, therefore, is requesting Metro to persue a "public interest" waiver of the "Buy America" requirements for this contract.

A precedent for this type of waiver was recently established on the Federal Building project in Portland, Oregon. Foreign stone products were used for the exterior cladding of this building. The general contractor was Blount Construction and the stone was installed by Blazing Granite out of Oregon.

There would be considerable cost savings to Metro if foreign stone were used on this job. Additionally, all products offered by Dal-Tile Corporation are readily available, thus, further guaranteeing "on time" delivery.

Dal-Tile Corporation is extremely interested in bidding this project and would like to know the outcome of this at the earliest possible date. Thank you for your interest in our products.

Very truly your
Charles E. H
Charles E. Hill
Dal-Tile Corpor

cc: Mr. Richard Lee
Ed Copeland, Porcelli Marmi

WAREHOUSE/SHOWROOM 520 SOUTH BRANDON STREET • SEATTLE WASHINGTON 98103 • 206/762-6520

MARBLE
ELEGANCE
IMPORTS,
LTD.

8512 PACIFIC AVE SE SUITE D
LACEY WASHINGTON 98503 U S A
PHONES (206) 491 8833 491 0712

[illegible]
MARBLE STRUCTURAL AND DECORATIVE
WHOLESALE ORDERS TO SPECIFICATION

CABLE ADDRESS MARBEL OLYMPIA

6 JAN 89 10 32

5 January 1989

Mr. Alan Pelton
Buyer, Purchasing MS 71
METRO
821 Second Avenue
Seattle, WA 98104-1598

Dear Pelton:

Re: Buy America Requirement
DSTP Contract CU 03 B

Although it is understandable that Americans wish to keep dollars and jobs at home, the fact is that in the stone industry several other countries are able to supply finished marble and granite at significantly lower prices and more efficiently.

There are other industries in which the United States is an outstanding producer--agriculture and some high technology areas.

Recognising that we live in a global economy in the later part of the 2 st century, we feel that it is our obligation to offer the taxpayers funding theMetro Transit Project the best possible prices, even if the product is imported.

By putting an embargo on imported stone, we would be inviting retaliatory embargoes by other countries. It is my considered opinion that by choosing our trading partners based on political trends as well as prices, we may be able to have a benificial influence worldwide.

Sincerely yours,

Ruth B Weisberg

Ruth B. Weisberg
President and General Manager
MARBLE ELEGANCE IMPORTS, LTD

Exchange Building 821 Second Ave • Seattle WA 981 598

January 19, 1988

Mr. John W. Maile
Cold Spring Granite Company
202 So. 3rd Ave
Cold Spring, Minn 56320

Dear Mr. Maile:

In reply to your questions asked during the January 5, 1988 Pre-bid Meeting on Finished Stone, RFB 88-001, I have the follwing response

Question:	Would Metro make full payment for materials received and accepted, rather than holding 5% of the final payment until completion of installation?
Answer:	No, Subsection 2-7 Measurement and Payment shall remain unchanged.
Question:	Would Metro delete the $500.00 requirement for liquidate damages?
Answer:	No, Subsection 2-14 Delivery and Liquidated Damages shall remain unchanged.

If you should have any further questions please call me at (206) 684-1056.

Respectfully Yours,

Al Pelton
Buyer, Purchaser

sb:007

Attachment 17

H

METRO
Municipality of Metropolitan Seattle
Exchange Building • 821 Second Ave • Seattle, WA 98104-1598

TO ALL POTENTIAL BIDDERS - FOR INFORMATION ONLY

January 20, 1988

Mr. John Maile
Cold Springs Granite Co.
202 S. 3rd Ave
Cold Springs, MN 56320

RE: PREBID SUBSTITUTION REQUESTS - FINISHED STONE RFB 87-0114

Dear Mr. Maile:

In reply to your request for a listing of all substitution reques and corresponding rulings, please notice the following information:

Company	Sample Name	Substituted For	Action
Cold Springs	Deer Island	GV 23,GP 19	Denied
Tileworks	Mysterious Gray Swirl	GP-1	Approved
	Twilight Zone	GP-1, GV 31	Approved
	Pink Crystal	GV 10	Approved
	Moody Gray	GV 31	Approved
	Sparkling Sunrise	GP-10	Approved
	Cascade White	GP-1, GV-31	Approved
City Ceramic	Stacia Red	GV-9	Approved
	Cascade Coral	GV-10, GP-19, GV-23	Denied
	Crystal Black	GV-21, GP-10, GP-13, GP-21	Approved
	Laurentide Green	GP-27	Approved
	Rosa Del Salto	GV-11	Approved
	Red Balmoral	GV-9	Approved
Dal-Tile	Pink Porrino	GV-10	Approved
	Limbara	GV-11	Denied
	Sierra Chica	GP-18, GV-20	Approved
	Black K	GP-21, GV-21	Approved
	Rosa Beta	GP-19, GV-23	Approved
	Pink Ghiandanato	GV 30	Denied
	White Sardenga	GP-1, GV 31	Approved
	Black Impala	GP-10, GP-13	Approved
	Red Vanga	GP-11	Approved
	Green Fantasy	GP-27	Denied
	White Carrara	MV-2	Denied

AP:sb:007

Attachment 18

H

MUNICIPALITY OF METROPOLITAN SEATTLE

King County, Washington

DOWNTOWN SEATTLE TRANSIT PROJECT

CONTRACT NO. RFB 87-0114

FINISHED STONE FOR CT03B

PART D

ADDENDUM NO. 2

Prospective bidders are hereby notified that the bidding documents of said Contract have been amended as follows:

Ref.	Section and Page	Location and Description of Change
		PART B - TECHNICAL SPECIFICATIONS The following materials have been approved for use in addition to those specified:
2.001	04450-4	d. GV-9 Red: 4) Dal-Tile/Porcelli Marmi "Red Balmoral" 5) City Ceramic/Quadra Stone Co. "Stacia Re
2.002	04450-4	e. GV-10 Pink: 3) Dal-Tile/Porcelli Marmi "Pink Porrina" 4) Tileworks/SDI Co. R.O.K. "Pink Crystal"
2.003	04450-5	f. GV-11 Gray: 4) City Ceramic/Quadra Stone Co. "Rosa Del S
2.004	04450-5	g. GV-20 Red: 4) Dal-Tile Porcelli Marmi "Sierra Chica"
2.005	04450-5	h. GV-21 Black: 4) Dal-Tile/Porcelli Marmi "Black K" 5) City Ceramic/Quadra Stone Co. "Crystal
2.006	04450-5	i. GV-23 Speckled: 4) Dal-Tile Porcelli Marmi "Rosa Beta"

Attachment 19

Ref.	Section and Page	Location and Description of Change
2.007	04450-5	k. GV-31 Light Gray: 5) Dal-Tile/Porcelli Marmi "White Sardenga 6) Tileworks SDI Co., R.O.K. "Moody Gray" 7) Tileworks SDI Co., R.O.K. "Mysterious Gray Swirl 8) Tileworks SDI Co., R.O.K. "Twilight Zone" 9) City Ceramic/Quadra Stone Co. "Cascade White"
2.008	09600-3	d. GP-1 Light Gray: 5) Dal-Tile/Porcelli Marmi "White Sardenga" 6) City Ceramic/Quadra Stone Co. "Cascade White" 7) Tileworks/SDI Co., R.O.K. "Mysterious Gray Swirl 8) Tileworks/SDI Co., R.O.K. "Twilight Zone"
2.009	09600-4	e. GP-10 Charcoal: 4) Dal-Tile/Porcelli Marmi "Black Impala" 5) City Ceramics/Quadra Stone Co. Crystal Black" 6) Tileworks/SDI Co., R.O.K. "Sparkling Sunrise"
2.010	09600-4	f. GP-11 Red: 4) Dal-Tile/Porcelli Marmi "Red Vanga"
2.011	09600-4	g. GP-13 Black: 4) Dal-Tile/Porcelli Marmi "Black Impala" 5) City Ceramics/Quadra Stone Co. Crystal Black"
2.012	09600-4	h. GP-18 Red: 4) Dal-Tile/Porcelli Marmi "Sierra Chica"
2.013	09600-4	19 i. GP-21 Black: 4) Dal-Tile/Porcelli Marmi "Rosa Beta"
2.014	09600-4,5	j. GP-21 Black: 4) Dal-Tile/Porcelli Marmi "Black K" 5) City Ceramics/Quadra Stone Co. "Crystal Black"
2.015	09600-5	k. GP-27 Medium Green: 2) Surfaces and Systems, "Verde Fontain" 3) Surfaces and Systems, "Verde Veneziano"

Bid Protest

I

January 20, 1988

Judy A. Riley M.S.71
Bid Protest
Municipality of Metropolitan Seattle
Exchange Bldg.
821 Second Avenue
Seattle, WA 98104

Re: Downtown Seattle Transit Project
Contract No. RFB 87-[illegible]

Dear Ms. Riley:

The specific reasons for our protest are twofold. The original specifications contain five groups of granites that do not contain at least one American product. Addendum No. 1 changes one American product to a foreign. Our letter dated January 8, 1988, to Mr. Pelton suggests all granite groups contain at least one American product since this project is subject to "Buy American Requirements". Addendum No. 2 received in our office January 20, 1988, does not allow for additional American products, but does allow at least twenty-one (21) additional foreign products.

Our second objection is that on December 28, 1987, we made a single request for substitution of an American product in addition to the specified foreign products; Addendum No. 2 denies that request.

The specific relief we request is:

A.) That our substitution request be reconsidered and approved.
B.) That the bid date be extended one month to allow us to gather and submit additional substitution requests.
C.) That each granite group specified contain at least one American product.

Sincerely,

COLD SPRING GRANITE COMPANY

John Maile

John Maile

JM:cb

Attachment 20

COLD SPRING GRANITE COMPANY/COLD SPRING MN 56320/TEL [illegible]

METRO
Municipality of Metropolitan Seattle
Exchange Building • 821 Second Ave • Seattle WA 98104 1598

A

January [illegible], 1988

JAN 25 1988
COLD SPRING [illegible]

Mr. [illegible] Maile
Cold Springs Granite Company
202 So. 3rd Ave.
Cold Springs, MN 56320

RE. RFB #87-C114 FINISHED STONE, COLD SPRINGS GRANITE CO., BID PROTEST

Dear Mr. Maile:

I refer to your letter dated January 20, 1988 protesting various items of the specifications, in the bidding document RFB #87-C114 Finished Stone.

A further review of the bidding document and specifications has been conducted, and I have concluded that the protest by Cold Springs Granite Company cannot be upheld.

I make the following comments to items in your letter:

A. The substitution requested by Cold Springs Granite Co. has been reexamined and the conclusion is again to find the samples unacceptable. The Cold Spring alternative speckled granite sample has been judged to be a "...cool muted-gray..." which would create a "...dull, cool unde ground... feeling". Our design objective with speckled granite has been to utilize the four distinct colors and values, as are seen in the speckled granite control samp (black, warm brown, medium grey and bright white) to cre a lightened and brightened atmosphere in the station. The stone's medium grain structure operates to create an active pattern for the walls. Moreover, the speckled granite, control samples, retain a vibrant quality at a variety of viewing distances, the colors and values becoming more pronounced at a medium distance of fiftee feet (the width of the platform). The colors and grain structure of the Cold Springs substitution sample for "speckled granite" become muted when viewing it from a variety of similar distances. In conjunction with the specified speckled granite, a bright red stone (with a large grain pattern) and a solid black stone (with a m grain pattern) were selected to create a dynamic triad of color, textures and values. Again, on comparison, the Cold Springs speckled granite substitution does not achieve the degree of emphasis wanted to create a dyna triad of color.

Attachment 21

b. Due to the construction [illegible] contractor [illegible] will be installing the granite, the bid opening date [illegible] be extended.

c. The architects and artists involved in facilitating the design objectives have integrated a wide range of accent suppliers for granite colors which can be combined to create a warm and lively atmosphere in the transit stat Unfortunately, the artists, in their search for acceptab colors, have not been able to identify a domestic grani supplier for each of the granite groups, although alter choices for each color were provided in the specificat A procedure for accepting [illegible] is also present in the specifications and many substitutions [illegible] and accepted during the six weeks allowed for [illegible].

In addition, foreign stone products specified are avai to domestic manufacturers in raw block form for process and, therefore, a domestic supplier completing the manu processes within the United States could comply with Bu America requirements and qualify as a domestic product supplier.

I trust the above satisfies your concerns.

Sincerely,

Judy Riley

Judy Riley
Purchasing Manager

AP:sb:007

Andy Moniz
METRO-DSTP
821 Second Ave
Seattle, WA
98104

Vicki Scuri
6712 Division
Seattle, WA
98117

January 21, 1988

Dear Andy,

In September 1987, METRO asked us to redesign the granite wall collage for University St. Station. Two major concerns were expressed: to meet the budget and to warm the Station palette. We proceeded to meet these requests by simplifying the complexity of the design (reducing the number of pieces of stone by using larger units) and by warming and reducing the complexity of the palette (the original design involved five subtle stone combinations incorporating a variety of finishes; the current design involves three distinct stone selections of warm, lively granites, incorporating standard stone finishes.) As a result of these changes the design of the Station became bolder, warmer, and more economical. A great deal of consideration was given to selecting a triad of stones which would enhance the design objectives. The speckeled stone was selected as the most prevalent stone in University St. Station because of its quality to lighten, brighten and warm the atmosphere of the Station. This stone has four distinct colors and values (black, warm brown, medium gray, and bright white.) The medium grain structure operates to create an active pattern for the walls. Moreover, the speckeled stone retains a vibrant quality at a variety of viewing distances, the colors and values becoming more pronounced at a medium distance of fifteen feet (the width of the platform.) In conjunction with the speckeled stone, a bright red stone (with a large grain pattern) and a solid black stone (with minimal grain pattern) were selected to create a dynamic triad of colors, textures and values. While the client felt it was important to reduce the budget, the client stressed that a high quality of design should be maintained. I believe that we have met the client's objectives.

The final stones which were selected for the control samples are each backed up by four alternate choices for each color. In this respect we are trying to encourage competition on the part of the suppliers. During the pre-bid qualification meeting we allowed several alternates to the specified stones. In each case, the alternates were clearly equivalents for the specified stones.

Unfortunately, the stone which Cold Springs has offered as an alternate does not come close to meeting the design criteria of the speckeled stone. Were we to allow this stone to be accepted as an alternate, we would undermine the intent of the substitution process. There would no longer exist any criteria for accepting or rejecting a stone. Moreover, the Cold Spring alternate, which is at best a cool, muted-gray-cast stone, would jeopardize the design standards of the system proper, by creating a dull, cool underground space.

As much as I have enjoyed working with Cold Springs Granite Company during the design phase (they were extremely helpful in providing samples and information) I cannot accept their proposed alternate for GV-23, the speckeled stone. With very strong reservations regarding their alternate, I rejected the stone.

Sincerely,

Vicki Scuri

Vicki Scuri

MUNICIPALITY OF METROPOLITAN SEATTLE - BID TABULATION

COMMODITY Finished Stone

DEPARTMENT Purchasing

REQUISITION NO RFB 87-0114

DATE OF OPENING 1/22/88 3:00 pm

ITEM NO.	ITEMS	Marvin Walker	DTC	Ann Sacks	Cold Spring	Far East	Quadra Stone
1	Stone Veneer GV-9	No BID	No BID	12 10	15 20	No BID	16 26
2	GV-10			9 40	41 91		24 58
3	GV-11			8 55	15 12		17 24
4	GV-20			14 70	50 82		17 63
5	GV-21			12 10	31 67		23 07
6	GV-23			8 55	25 65		14 28
7	GV-30			8 87	19 51		20 32
8	GV-31			9 90	13 98		15 40
9	Stone Strips GV-31			9 90	13 98		16 93
10	Stone Veneer MV-2			6 75	46 00		24 37
11	Split Face Stake			31 50	142 47		32 20
12	Stone Paver GP-1			9 40	12 92		13 73

attachment 23

W.C. Pelton
Wendy Knight } Metro

[illegible] Overton Far East USA, Inc
[illegible] Cold Spring
[illegible] / [illegible] Co. Inc
[illegible] Fil Granite (Ann Sacks) [illegible]

MUNICIPALITY OF METROPOLITAN SEATTLE · BID TABULATION

ODITY Finished Stone

RTMENT Purchasing

ISITION NO. RFB 87-0114

OF OPENING 1/[illegible]88 3:00 p.m.

Y.	ITEMS	ITEM NO	MLW	DTC	Sacks	Cold Spring	Far East	Quadra Stone
3	GP-10				11 60	16 26		19 39
7	GP-11				14 20	28 44		18 72
15	GP-13				11 60	16 26		19 79
16	GP-18				14 20	42 24		14 50
17	GP-19				8 05	25 06		12 97
13	GP-21				11 60	24 74		19 51
19	GP-27				14 30	45 07		28 40
20	Stone Riser GP-1				48 00	14 18		10 73
21	GP-11				81 50	22 82		11 51
22	GP-21				60 00	21 55		15 33
23	Stone Tread GP-1				48 00	29 37		25 20
	GP-10				60 00	32 23		35 89

MUNICIPALITY OF METROPOLITAN SEATTLE · BID TABULATION

COMMODITY Finished Stone

DEPARTMENT Purchasing

REQUISITION NO. RFB 87-0114

DATE OF OPENING 1/20/88 5:00 p.m.

QTY.	ITEMS	ITEM NO.	MLW	DTC	Sacks	Cold Spring	Far East	Quadra Stone
25	GP-14				40 50	50 58		23 67
26	GP-24				76 00	38 77		35 88
27	Polished				INCL.			1 00
28	Honed				INCL.			1 00
29	Thermal				INCL.			1 00
30	Routing				INCL.			15 00
	Total Bid				1,407,174 00	2,557,534 00		1,899,451 31

Municipality of Met litan Seattle
Exchange Building • 821 Second Ave • Seattle, WA 98104-

K

January 29, 1988

FEDERAL EXPRESS

[illegible]
FEB 0 [illegible]
COLD SPRING [illegible]

Mr. John Maile
Cold Springs Granite
202 South 3rd Ave
Cold Spring, Minn. 56320

RE: FINISHED STONE RFB #87-0114

Dear Mr. Maile:

After reviewing all bids submitted in Metro's Request for Bids for the Supply and Delivery of Finished Stone Materials #87-0114, which was opened on January 26, 1988, Metro's Purchasing Agent has instructed the Purchasing Section to rebid this purchase due to all bids being either incomplete or non-responsive.

Cold Springs Granite: "Dear Island" speckled granite for GV-23, GP-19 is unacceptable. (see Metro letter in reply to protest)

Conclusion: The bid is non-responsive.

Please find attached your bid security. If you should need clarification or would like to discuss this action, please contact me at (206) 684-1056.

Sincerely,

Allan Pelton
Buyer, Purchasing

sb:025.1

Attachment 24

L

February 3, 1988

Executive Director
Municipality of Metropolitan Seattle
Exchange Building
821 2nd Avenue
Seattle, WA 98104

Ref: Downtown Seattle Transit Project
Contract No. RFB 87-0114
Protest Appeal

Dear Director,

On January 20, 1988, we submitted a bid protest. Please refer to that letter for the specific reasons.

Your letter dated January 21, 1988, received by us on January 25, 1988, denies our protest.

Cold Spring Granite files this appeal pursuant to 49 U.S.C.A. §1602 (a) (2) (C) (1987), which states that no grant or loan funds "shall be used to support procurements utilizing exclusionary or discriminatory specifications." The history of the specifications for the Downtown Seattle Transit Project demonstrates an attempt to systematically exclude and discriminate against domestic granite.

These actions, including the removal of domestic granite from the bid specifications and the rejection of otherwise acceptable U.S. alternates, are proportedly justified for artistic reasons. The law, however, does not contemplate such an exception to this provision. Rather, discriminatory specifications are considered only if the local authorities can demonstrate that the specifications are "transit related." Unfortunately, any differences between a Rosa Beta granite and Deer Island are nothing more than artistic. Therefore, any attempt to discriminate against, or exclude such a suitable alternative from the specifications is unjustifiable and in violation of the statue.

We also need to address the practical aspect of this choice. Our substitute choice is an American source of reliability and quality. The specified materials are of Italian origin. Italian and Spanish products for such applications as this project are presently at issue under a trade action petition. Unless METRO is willing to accept pending additionally duties after the bid, we doubt a responsive bid is possible.

Please reconsider our substitution request.

Sincerely,

COLD SPRING GRANITE COMPANY

J. W. Maile
JM:jk

Attachment 25

COLD SPRING GRANITE COMPANY/COLD SPRING, MINN. 56320/TEL: 612-685-3621
(OUT OF STATE TOLL FREE 800-328-7038)

METRO
Municipality of Metropolitan Seattle

Exchange Bldg. • 821 Second Ave., Seattle, Washington 98104

D
RECEIVED
FEB 08 1988
COLD SPRING GRANITE

February 4, 1988

Mr. John Maile
Cold Springs Granite Company
202 South 3rd Avenue
Cold Springs, Minnesota 56320

Re: RFB #87-0114: FINISHED STONE, COLD SPRINGS GRANITE CO., Appeal from Denial of Bid Protest

Dear Mr. Maile:

This is to advise that your appeal from the denial of your protest re the substitution of the proposed alternate "Deer Island" for the granite specified as GB23 or GP19 is denied for the reasons set forth in the letter dated January 21, 1988 denying your protest.

That the RFB is not a violation of law or any other principle of competitive bidding is established by the record. During the nearly six weeks in which substitute submittals could be offered, 24 were proposed, 18 of which were approved as equal to the granite specified by the RFB. Clearly the process was open to alternatives. It does not take a practiced eye to determine that there are significant differences between the speckled granite specified and the granite proposed by Cold Springs as a substitute.

To say that there is no transit related purpose for the speckled stone specified is to suggest that a proposer could have substituted any granite of whatever color or finish for that specified. I agree with the discussion set forth in the January 21, letter concerning the value of having a warm and lively atmosphere in the stations. The architecture of a transit station is clealy transit-related.

Neither the facts, record, nor RFB support your assertion that there has been any attempt to exclude or discriminate against domestic granite.

This decision is administratively final.

Very truly yours,

Richard A. Mattsen
Designee of the Executive Director

RAM:pa
cc: Alan J. Gibbs
Judy Riley
Vladimir Khazak

Attachment 26

Finished Stone - Bid Opening
IFB #88-006
2/9/88 3:00 p.m.

Name	Representing
[illegible]	Metro
[illegible]	Metro
[illegible]	[illegible] Tile Corp / Porcel[illegible]
[illegible]	[illegible]
RENATO [illegible]	GUADRA
HUGH MADDIN	QUADRA STONE
Bill Hoff	City Ceramic Tile Co.
Andy Moniz	METRO
Vicki Scullin	ARTIST

Attachment 27

MUNICIPALITY OF METROPOLITAN SEATTLE · BID TABULATION

COMMODITY Finished Stone

DEPARTMENT [illegible]

REQUISITION NO. [illegible]

DATE OF OPENING [illegible]

QTY.	ITEMS		ITEM NO.	[illegible] Spring		Carlo Mariotti		Quadra		Dal-Tile							
	1	GV-1		15	20	18	50	15	62	20	50						
	2	GV-10		41	91	28	90	23	94	17	50						
	3	GV-11		15	12	15	75	16	60	25	50						
	4	GV-20		50	52	20	15	16	99	24	00						
	5	GV-21		31	67	18	85	22	43	22	60						
	6	GV-23		25	05	13	55	13	64	15	50						
	7	GV 30		19	51	17	05	19	68	19	50						
	8	GV-31		13	98	14	55	14	76	16	50						
	9	GV-31		13	98	129	00	16	29	21	00						
	10	MV-2		46	00	17	10	23	75	24	50						
	11	GV 31		142	47	106	00	31	56	31	00						
	12	GP-1		12	92	15	05	13	09	13	50						

MUNICIPALITY OF METROPOLITAN SEATTLE · BID TABULATION

COMMODITY

DEPARTMENT

REQUISITION NO

DATE OF OPENING

NAME OF BIDDERS

QTY.	ITEMS		ITEM NO.	Spring		Mazzotti		Quadra		Dal-Tile	
	13	GP-10		16	26	16	80	18	75	18	50
	14	GP 11		28	41	20	40	18	08	22	00
	15	GP-13		16	26	16	70	19	15	18	50
	16	GP 18		42	24	22	05	13	86	22	50
	17	GP 19		25	06	13	80	12	33	13	00
	18	GP 21		34	74	20	30	18	87	22	50
	19	GP 27		45	07	26	75	27	76	28	50
	20	GP 1		14	18	9	40	10	42	8	90
	21	GP 11		22	82	12	95	11	20	10	70
	22	GP-21		21	55	12	85	15	02	10	50
	23	GP-1		29	37	28	40	24	45	28	00
	24	GP 10		32	23	28	60	~~43~~		29	00

35.14

#232 (4-78)

MUNICIPALITY OF METROPOLITAN SEATTLE - BID TABULATION

COMMODITY

DEPARTMENT

REQUISITION NO.

. .TE OF OPENING

QTY.	ITEMS	ITEM NO.	Cold Spring		Carlo Mariotti		Quadra		Dal-Tile					
-	25 GP-19		50	58	29	60	22	92	27	50				
	26 GP 27		38	77	43	50	35	13	31	50				
	27 Polished		INC		INC		1	00	INC					
	28 Honed		|		|		1	00	|					
	29 Thermal		|		|		1	00	|					
	30 Routing		|		|		15	00	18	50				
	Total		2,539,554	00	1,845,271	00	1,834,418	02	1,956,722	40				

0277 (4 78)

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FOUNDED IN 1938 AS ROBINS, DAVIS & LYONS
ATTORNEYS AT LAW

ATLANTA, GEORGIA
DALLAS, TEXAS
MINNEAPOLIS, MINNESOTA
NEWPORT BEACH, CALIFORNIA
SAINT PAUL, MINNESOTA
WASHINGTON, D.C.
[illegible]

ARMY-NAVY CLUB BUILDING
SUITE 610
1627 EYE STREET, N.W.
WASHINGTON, D.C. 20006-4001
TELEPHONE (202) 861-6800
TELECOPIER (202) 861-6819
TELEX 4931197 RZLK UI

PAMELA McCARTHY DEESE

February 16, 1988

By Hand:
Theodore A. Munter, Esq.
Assistant Chief Counsel
Urban Mass Transportation Administration
400 Seventh Street, S.W.
Room 9316
Washington, DC 20590

Re: Bid Protest
Seattle Bus Tunnel Project
Contract No. RFB 87-0114
Contract No. RFB 88-006

Dear Mr. Munter:

This protest is filed in accordance with UMTA circular 4220.1A on behalf of the Cold Spring Granite Company of 202 South Third Avenue, Cold Spring, Minnesota, 56320. The protest is filed pursuant to an alleged violation of 49 U.S.C.A. §1602(a)(2)(c)(1987) by METRO of the Municipality of Metropolitan Seattle in the bidding of the Downtown Seattle Transit Project, Contract Nos. RFB 87-0114 and 88-006.

Attachment 28

BASIS FOR PROTEST

The above mentioned statute states that no grant or loan funds "shall be used to support procurements utilizing exclusionary or discriminatory specifications." In specifying granite for the Downtown Seattle Transit Project, METRO has refused to accept a domestic granite as an alternate for allegedly transit-related purposes. The discriminatory specifications relied upon by METRO are not permissible especially for what are, on their face, non-transit related purposes.

Specifically, the METRO rejection of the substitute granite requested by Cold Spring Granite Company was based on the following rationale:

> The Cold Spring alternative speckled granite sample has been judged to be a ". . . cool muted-gray . . ." which would create a ". . . dull, cool underground . . . feeling". [sic] Our design objective has been . . . to create a lightened and brightened atmosphere in the station . . . The colors and grain structure of the Cold Springs [sic] substitution sample for "speckled granite" become muted when viewing it [sic] from a variety of similar distances . . . Again on comparison, the Cold Spring speckled granite substitution does not achieve the degree of emphasis wanted to create a dynamic triad of color. See, Letter from Judy Riley to John Maile, dated January 21, 1988, Attachment A.

The appeal from the denial of the bid protest resulted in a similar statement of reasons on behalf of METRO. METRO's decision on February 4, 1988, from which this appeal is taken, stated that:

> To say that there is no transit related purpose for the speckled stone specified is to suggest that a proposer could have substituted any granite of whatever color or finish for that specified. I agree with the discussion set forth in the January 21, letter concerning the value of having a warm and lively atmosphere in the stations. The architecture of a transit station is clearly transit related. *See*, Letter from Richard A. Mattsen to John Maile, dated February 4, 1988, Attachment B.

This appeal is filed in objection to METRO's reasoning in denying "Deer Island" as a suitable alternate granite. The appeal is premised on 49 U.S.C.A. §1602(a)(2)(c) which prohibits the use of discriminatory and exclusionary specifications. It is Cold Spring's understanding that UMTA has permitted exclusionary and discriminatory specifications only when they can be justified for transit-related purposes. METRO's statement that the selection of one granite over a very similar granite is transit-related is self-serving. Further, METRO's statement that if their justification were not transit-related a "proposer could have substituted any granite of whatever color or finish," is extending logic to an untenable result. Clearly, the bidder did not request "any" granite as a substitute, but a highly regarded domestic granite which many previous purchasers have found suitable as an alternate to Rosa Beta, the foreign granite favored by METRO. In this regard, the statute is clear on its face when it states that no grants or loans shall be used to support procurements such as this which utilize exclusionary or discriminatory specifications.

Cold Spring requests that UMTA find the specifications for contract nos. RFB 87-0114 and RFB 88-006 exclusionary and discriminatory and, therefore, in violation of 49 U.S.C.A. §1602(a)(2)(C). Cold Spring asks further that "Deer Island" granite be permitted to be bid as an alternate granite for the granite specified as GV-23 or GP-19. Moreover, METRO's decision to treat the granite portion of the project as a separate contract is an attempt to avoid the "Buy America" requirements of the Surface Transportation Act of 1982 (Section 165). METRO's actions should be thoroughly reviewed and appropriate measures taken to see that Cold Spring Granite, as a qualified U.S. bidder, be awarded the subject contract.

This request is timely filed though UMTA provides in circular 4220.1A(4)(b) that "[P]rotests based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent prior to bid opening . . . shall be filed not later than three (3) days prior to bid opening." UMTA indicates further that a protest will be considered where good cause can be shown based on a "compelling reason beyond the protestor's control, whereby the lateness is due to the fault of UMTA or the grantee in handling of his submission." UMTA 4220.1A 4d.

In this case Cold Spring received METRO's response to its appeal from the denial of its protest on February 9, 1988. Bid opening was February 9. It was obviously impossible for Cold Spring to file this protest three days prior to bid opening. In cases other than protests based upon restrictive specifications, UMTA requires that a protest be filed within ten (10) days after the exhaustion of administrative remedies at the grantee level is known. UMTA C 4220.1A 4c. Therefore, Cold Spring's filing of this appeal only eight (8) days after it learned of its exhaustion of administrative remedies at the grantee level should be accepted as timely filed.

CHRONOLOGY OF EVENTS:

In June, 1985, John Maile of the Cold Spring Granite Company was contacted by Parsons, Brinckerhoff-TRA architects for this project to put on a presentation concerning granite. From June, 1985, to June, 1987, Mr. Maile made numerous office visits to the architects to discuss granite colors, finishes, detailing, and attachments. During these two years, scores of granite samples for color and finish consideration were submitted by Cold Spring.

On July 2, 1987, this project was bid for general bid. Of the 13 granites bid by Cold Spring, only one was required to be of foreign source. That one being Red Vanga from South America. Cold Spring's bid of July 2, 1987, was approximately 3.5 million dollars. The general bid, being the total package for all work in all three stations, exceeded the budget by approximately 14 million dollars. Due to the budget overrun, all bids were rejected, and METRO ordered extensive cost reduction design changes.

From July, 1987, to December, 1987, Mr. Maile continued to work with the architects on detailing, color, and finish cost reduction changes. Between July and December, 1987, METRO decided to separate the granite from the general re-bid. METRO's decision was to use a pre-procurement bid, with an assignment to the general contractor. This strategy allegedly was intended to avoid mark-ups by contractors and subcontractors. In practice, the effect of separating the granite from the general re-bid, was to alter the impact of "Buy America." By treating the granite as a separate contract, the "Buy America" provisions would be waived if the inclusion of domestic material increased the contract by 25 percent. METRO's actions were in violation of "Buy America."

The publication of the bid for the granite procurement occurred on December 7, 1987. Mr. Maile picked-up the bid documents on December 9. The bid documents' mandatory terms and conditions contained such items as: Bids shall be made on the bid form issued without reservation or amendment; a bid bond of five percent of the bid is required; bids can be rejected for omitting a bid on any one or more items on which bids are required, unbalanced bids, or lack of unit prices.

The bid documents separated the granite into two sections, stone veneer, and stone pavers and flooring. Within each section there were eight groups of granite, each group having a choice from one, to as many as four granites to bid. Among the sixteen groups, five groups did not offer at least one American granite. Mr. Maile's letter of January 8, 1988, to METRO suggested that each group offer at least one American granite since this was a "Buy-America" project. See, Letter from John Maile to Al Pelton, dated January 8, 1988, Attachment C.

On December 21, 1987, METRO issued Addendum No. One which, among other things, deleted Cold Spring Black granite and replaced it with "Southern Black Granite." Southern Black granite is usually a South American granite. Mr. Maile's letter of January 8, 1988, also advises METRO that this complicates domestic bidding. See, Attachment C.

On December 28, 1987, Cold Spring Granite submitted a formal substitution request. The bid documents provided for pre-bid substitution requests for submitting products in place of those specified. Cold Spring's substitution request was for "Deer Island" granite in lieu of Rosa Beta. Deer Island is a domestic granite from Maine. Rosa Beta granite is Italian. In consideration of the pending antidumping and countervailing duty investigations, the Rosa Beta would be virtually unavailable to domestic manufacturers. Cold Spring Granite's choice of Deer Island was based on its similarity to Rosa Beta, as well as its domestic origins, availability, qualifying test data and its extensive use in many other transit projects throughout the United States. The bid documents required documentation with substitution requests as to performance, test data, and a listing of the names of projects using the granite under similar conditions. See, Substitution request literature at attachment D.

On January 5, 1988, Mr. Maile attended a pre-bid meeting to ask questions concerning the bid. His first question was whether the five percent retainage of payment could be deleted. The bid documents called for payment of the retainage upon completion of installation, and acceptance by METRO. The schedule calls for delivery in November, 1988, and then, opening to the public in May, 1990. It could be possible for METRO to hold the five percent retainage for two years.

Mr. Maile's second question was whether METRO would delete the $500.00 per day liquidated damages. This is a serious concern because the bid documents allow METRO 90 days after bid opening to designate a low responsive bidder. The low bidder then has to furnish a performance bond. After the performance bond is accepted the low bidder needs to write a contract with the prime contractor. The low bidder also needs to submit samples. The prime contractor needs to supply shop drawings to the stone manufacturer. All of the above does not leave enough time to fabricate the stone and ship it, prior to the specified date subject to liquidated damages. On January 19, 1988, METRO responded to Mr. Maile's two questions by denying both. See, letter at Attachment E. Mr. Maile did not raise substitutions at this meeting, due to the presence of his competition.

On January 7, 1988, METRO requested a public interest waiver of "Buy-America." See, Letter from Jane Elder Bogle to Edward J. Gill, dated January 7, 1988, Attachment F. See, also, letter from Pamela Deese to Alan Pelton, dated January 4, 1988, Attachment G.

On January 20, 1988, METRO denied Cold Spring Granite's substitution request along with five others. At the same time, METRO approved 18 other substitutions; the majority of which were foreign, in addition to those already specified. See, Letter from Al Pelton to John Maile, dated January 20, 1988, Attachment H. Only three working days remained before bid day.

On January 20, 1988, immediately after learning of Cold Spring Granite's substitution denial, a bid protest was filed. See, Letter from John Maile to Judy A. Riley, dated January 20, 1988, Attachment I.

On January 21, 1988, METRO rejected Cold Spring Granite's bid protest. The reasons articulated by METRO were quite clearly artistic rather than transit-related. See, Letter from Judy Riley to John Maile, dated January 21, 1988, Attachment A.

January 26, 1988, was bid day. Ann Sacks of Fratelli Guarda (Italian manufacturer) submitted the low bid at $1,407,174.00; City Ceramic/Quadra Stone (Canada importer of Italian granite) submitted the second lowest bid at $1,899,451.00; Cold Spring Granite was the high bid at $2,539,534.00. See, Bid tabulation of January 26, 1988, Attachment J.

All bids were rejected. The two low bids were rejected due to an absence of bid security. Cold Spring Granite's bid was rejected due to bidding Deer Island granite under protest and denial. See, Letter from Allan Pelton to John Maile, dated January 29, 1988, Attachment K.

On February 3, 1988, Cold Spring Granite filed a protest appeal. See, Letter from John Maile to the Executive Director of the Municipality of Metropolitan Seattle, dated February 3, 1988, Attachment L.

METRO denied Cold Spring Granite's protest appeal on February 4, 1988. See, Letter from Richard Mattsen to John Maile, dated February 4, 1988, received February 8, Attachment B.

Re-bid documents for this project were received by Cold Spring Granite on February 1, 1988. The contract reference number was changed to RFB 88-006. The contract drawings remained unchanged. The bid documents were unchanged, except for the pre-bid substitution process. In the bid of February 9, 1988, substitution requests were permitted to be made with the bid. However, if the substitutions were not approved, the bidders were bound to the specified granites.

February 9, 1988, was re-bid day. Cold Spring granite re-bid the same bid as January 26, 1988, under protest appeal pending.

On February 12, 1988, Cold Spring received the bid tabulation of February 9, 1988. Quadra Stone (Canadian importer of Italian Stone) was low at $1,834,418.00, Carlo Mariotti (Italian importer) was second at $1,848,271.00, Dal Tile/Procelli

(Italian importer and manufacturer) was third low at $1,956,722.00, and Cold Spring Granite was the high bid at $2,539,534.00. See, Bid Tabulation, Attachment M.

The fact that Deer Island granite has been used successfully in many other metropolitan transit stations in the United States, supports Cold Spring Granite's allegations that METRO's specifications were exclusionary and discriminatory. Additionally, such frequent applications of Deer Island in transit stations demonstrates that its rejection as an alternate was for purely artistic rather than transit-related purposes.

TRADE INVESTIGATION:

In July, 1987, the domestic granite industry filed an antidumping and countervailing duty petition with the U.S. International Trade Commission (ITC) and the Department of Commerce (Commerce). The petition alleged that granite from Italy and Spain was being sold in the United States at less than fair value and was benefitting from government subsidies. Petitioner estimated the margins of dumping ("sales at less than fair value") to be from 116 to 234 percent of the value of the merchandise. In September, 1987, the ITC unanimously determined that the domestic industry demonstrated a reasonable indication of material injury as a result of dumped and subsidized imports. In the preliminary countervailing duty determination in December, 1987, Commerce ruled that imports from both Italy and Spain had benefitted from government subsidies. Spanish imports were assessed with a 2.51 percent countervailing duty while Italian subsidies were found to be de minimis. A preliminary determination from Commerce in the antidumping investigation will be announced February 24. The final determinations in both the countervailing and antidumping investigations will be made May 9 at the earliest. Any additional duties are paid by the importer and under the law cannot be paid or reimbursed by the foreign exporter or manufacturer. 19 C.F.R. §353.55 (1987).

CONCLUSION:

Cold Spring Granite believes that METRO authorities may improperly be basing the contract specifications excluding domestic granite on the unfair pricing policies of foreign bidders. The purported justification of the exclusionary granite specifications is transit-related. However, METRO's own documentation in Cold Spring's protest and appeal demonstrates only an artistic justification which is in clear contradiction to 49 U.S.C.A. §1602(a)(2)(C). METRO's actions are not those intended by Congress in the enactment of "Buy America" or the antidumping and countervailing duty laws. Essentially, a domestic manufacturer should be able to compete with fairly priced imports under Buy America. In this case, however, the discriminatory and exclusionary bid specifications were designed to keep a domestic manufacturer from even bidding on a project designated as "Buy America." METRO's denial of a domestic alternate was not substantiated by the facts obtained in the bid process, and is, therefore, inappropriate and otherwise not in accordance with the law.

Cold Spring Granite respectfully requests that UMTA overrule METRO's denial of its appeal and bid protest and require that "Deer Island" be identified as a suitable alternative. If this relief is granted, Cold Spring's bid of January 26 should be accepted as the only responsive bid since the other two bidders lacked the necessary bid security. UMTA should conclude further that the pre-bid and re-bid process culminating on February 9, 1988, was in violation of the governing statute and, therefore, nonbinding on any of the parties.

Respectfully submitted,

Pamela M. Deese
Counsel to Cold Spring
Granite Company

PMD/pma

Attachments
cc: Edward Gill, Esq.
Terry Ebersole, Region 10

METRO
Municipality of Metropolitan Seattle

Exchange Bldg. • 821 Second Ave., Seattle, Washington 98104

March 1, 1988

FEDERAL EXPRESS

RECEIVED
MAR 0 3 1988
COLD SPRING GRANITE

Mr. John Maile
Cold Springs Granite
202 South 3rd Ave.
Cold Springs, Minn. 56320

RE: FINISHED STONE RFB #88-006

Dear Mr. Maile:

After reviewing the bid submitted by Cold Springs Granite Co. in Metro's Request for Bids for the Supply and Delivery of Finished Stone Materials #88-006, which was opened on February 9, 1988, Metro's Purchasing Agent has determined the bid offered by Cold Springs Granite Co. to be non-responsive for the following reason:

"Dear Island" speckled granite for GV-23 and GP-19 is an unacceptable substitute.

Conclusion: The bid is non-responsive.

If you should need clarification or would like to discuss this action, please contact me at (206) 684-1056.

Sincerely,

Alan Pelton
Buyer, Purchasing

sb:025.1

Attachment 29

U.S. Department
of Transportation
**Urban Mass
Transportation
Administration**

Region X
Alaska, Idaho
Oregon, Washington

915 Second Avenue
Suite 3142
Seattle, WA 98174

March 17, 1988

Ms. Pamela Deese, Esq.
Robins, Zelle, et al.
1627 Eye Street, N.W., Suite 610
Washington, D.C. 20006-4001

Re: Bid Protest
Seattle Bus Tunnel Project
Contract No. RFB 87-0114
Contract No. RFB 88-006

Dear Ms. Deese:

You have filed a bid protest on behalf of Cold Spring Granite Company with respect to the subject project.

The complaint alleges the following violations:

1. Seattle METRO's specifications for granite were designed to exclude domestic bidders, in violation of UMTA requirements forbidding exclusionary specifications.

2. The purpose of the exclusionary specifications was artistic rather than transit-related.

3. METRO may be basing the contract specifications on the unfair pricing practices of foreign bidders.

4. METRO's actions violated the intent of statutory Buy America provisions applicable to UMTA-assisted procurements.

The complaint seeks the following relief:

1. UMTA should require METRO to identify "Deer Island" granite as a suitable alternative to the specified granite.

2. METRO should then be required to accept Cold Spring's bid of January 26 as the only responsive bid.

Normally, bid protests regarding specifications must be received by UMTA at least three days prior to bid opening. Late protests may be considered, however, if the lateness was caused by a grantee's handling of the initial protest at the local level.

Attachment 30

Bid opening for the contested procurement took place on February 9, 1988. UMTA received the bid protest on February 22. Cold Spring did not receive a final decision from the grantee concerning the company's bid protest until the day for bid opening. Therefore, the lateness of this protest concerning specifications is excused. UMTA must reject the protest on other grounds, however.

Accepting all facts set forth in the bid protest as being true, UMTA would still lack any legal basis for ruling in favor of Cold Spring. Moreover, UMTA is not empowered to grant the type of relief being sought. Therefore, the bid protest is rejected.

GROUNDS FOR UMTA REVIEW

The general rules which govern UMTA's review of protests are contained in UMTA Circular 4220.1A and OMB Circular A-102, Attachment O. Paragraph 3 of Attachment B to UMTA C 4220.1A limits UMTA's review of any protest to:

A. Violations of Federal law or regulations; and

B. Failure of a grantee to follow its own protest procedures or failure to review a complaint or protest.

The protestor must be able to demonstrate a clear violation by the grantee of a specific law or regulation, such as a violation of the prohibition against unduly exclusionary and restrictive specifications, or a violation of Buy America requirements.

Determinations concerning the responsiveness and responsibility of bidders are decisions which should generally be made at the local level (UMTA Circular 4220.1A, Attachment B, Paragraph 2(e)). Such decisions will not be overturned by UMTA unless they are arbitrary or capricious.

COMPLAINT ALLEGATIONS

1. Exclusionary Specifications

Cold Spring attempted to have its "Deer Island" granite accepted as an alternative to the Italian Rosa Beta granite specified by METRO. METRO did go through a rather exhaustive process of granite substitutions, but did not accept the substitution of "Deer Island, " which was twice bid by Cold Spring and twice rejected by METRO as non-responsive.

Cold Spring has alleged that METRO's specifications were designed to exclude domestic bidders. Regardless of whether a grantee is specifying a foreign or a domestic product, the grantee's decision on specifications will be upheld by UMTA as long as it is based on reasonable needs of the grantee and is not arbitrary or capricious. Rationally based criteria for product selection will not be held to be unduly exclusionary.

Evidence submitted by Cold Spring shows that METRO's specifications for granite were based on expert advice regarding project aesthetics. As Exhibit A also points out, it may have been possible for a domestic supplier to obtain unfinished foreign stone for processing in the United States, thus making the finished stone a domestic product under Buy America guidelines. There is no evidence of an arbitrary or capricious decision made by METRO to specify a foreign product or exclude domestic bidders. Therefore, UMTA finds that the protestor has not shown METRO's specifications for granite to be unduly restrictive.

2. Artistic Considerations

Cold Spring has correctly pointed out that METRO's specifications are based in part on artistic considerations. This is not per se improper. Decisions on aesthetics are an important part of planning for transit projects. An attractive project can enhance the local environment, add to passenger enjoyment, and boost transit ridership. Thus, decisions on aesthetics are "transit-related." Again, UMTA will not substitute its judgment for that of a grantee concerning aesthetics, especially in a case such as this, where it is clear that professional advice was sought and followed in the specification of materials.

3. Unfair Pricing

Cold Spring has alleged unfair pricing by foreign suppliers. As the bid protest states, this issue is being examined by the International Trade Commission and the Department of Commerce. These entities, rather than UMTA, have proper jurisdiction to decide such matters.

4. Buy America Violation

Cold Spring has complained that prior to rebidding the tunnel station work, METRO improperly separated the granite contract from the general contract. The alleged motivation for the segregation was to increase the likelihood that foreign granite would qualify for a Buy America waiver based on price differential.

The complaint maintains that any price comparison will now be based on the relative costs of foreign and domestic granites standing alone, rather than any percentage increase in the overall cost of the stations from the inclusion of domestic granite. In Cold Spring's opinion, this will make it easier for METRO to obtain a Buy America waiver for the desired foreign granite.

In the absence of compelling evidence, UMTA can only speculate on METRO's motives in segregating the contracts. Whether the segregation of contracts will actually help METRO to obtain a Buy America waiver is also open to some doubt. Even if UMTA were to accept Cold Spring's view of METRO's motives, however, and Cold Spring's opinion that such an action would, in fact, help METRO to obtain a Buy America waiver for foreign granite, there would still be no violation of Buy America requirements. Buy America guidelines simply do not prohibit any such segregation of contracts, regardless of what the motive may be.

RELIEF SOUGHT

1. Identification of "Deer Island" as Alternative

Since UMTA has found that METRO's specifications have not been shown to be unduly exclusionary and are reasonably related to the needs of the grantee, UMTA will not require that the specifications be broadened.

2. Acceptance of Cold Spring's Bid

Cold Spring has asked UMTA to order METRO to accept Cold Spring's bid. Such action is not supportable. METRO rejected all bids. Cold Spring's bid was rejected because it did not conform to the specifications. Thus, there is no basis upon which METRO could accept Cold Spring's bid. Had UMTA determined the specifications to have been unduly restrictive, the proper remedy would have been for UMTA to order METRO to readvertise the procurement to all prospective bidders if METRO wished to retain eligibility for Federal assistance for the project.

CONCLUSION

Evidence presented in Cold Spring's protest does not show any violation of Federal procurement or Buy America regulations. The relief requested cannot be granted. The bid protest is hereby denied.

Sincerely yours,

Terry L. Ebersole

Terry Ebersole
Acting Regional Manager

cc: Edward Gill, UCC-2
Donald Durkee, UCC-30
Arlan Eadie, UAD-43
Alan J. Gibbs, Seattle Metro

METRO
Municipality of Metropolitan Seattle

Exchange Bldg. • 821 Second Ave., Seattle, Washington 98104

April 1, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RECEIVED
APR 0 4 1988
COLD SPRING GRANITE

Mr. John Maile
Cold Springs Granite Co.
202 So. 3rd Ave.
Cold Springs, Minn.

Dear Mr. Maile:

Metro has authorized the award of a contract to Carlo Mariotti, Inc. for the Supply and Delivery of Finished Stone as a result of Metro's Request for Bids No. 88-006.

Please find enclosed is your bid security. Thank you for participating in Metro's bidding process.

Sincerely,

Alan Pelton
Buyer

sb:002

Attachment 31

TESTIMONY OF RONALD J. POSTHUMA
GOVERNMENT RELATIONS MANAGER
MUNICIPALITY OF METROPOLITAN SEATTLE
GIVEN BEFORE
THE HOUSE PUBLIC WORKS SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
May 12, 1988

Mr. Chairman, I want to thank you for providing my agency, the Municipality of Metropolitan Seattle (Seattle Metro) with an opportunity to testify on our experience with the implementation and enforcement of the Buy America provision of the Surface Transportation Assistance Act.

The Subcommittee's May 5, 1988 letter requesting this testimony asked us to address a series of issues specifically related to the procurement of granite tiles. Before addressing those specific issues, please allow me to describe our agency and the Downtown Seattle Transit Project so that you will have some background about the context for our granite tile procurements.

Seattle Metro is a large, special district government providing sewage treatment and disposal as well as transit services to the residents of King County in the state of Washington. Our 40-member governing board includes all of the most prominent local elected officials from the City of Seattle, the largest suburban cities and King County government. The agency has been in existence for thirty years. We have provided transit services throughout our region for the last sixteen years. We are the third largest local government in the state of Washington. In 1987, our agency employed 2,937 transit and 537 water quality employees.

Our annual capital budgets during the decade of the 1980s will average $95.8 million for transit and $74.3 million for water quality (actual figures unadjusted for inflation). Grants from the Urban Mass Transportation Administration are financing roughly half of our overall transit capital program in this decade. In 1987, our 7 purchasing agents completed 2,367 procurements valued at $247.7 million. Additional procurements occurred as part of construction contracts. Again in 1987, our Technical Services Department assisted by consulting engineers and architects awarded 35 construction contracts valued at $124,431,465.

I am a member of the agency's executive staff and report directly to our Executive Director, Alan J. Gibbs. From that vantage point, I can tell you that our management philosophy emphasizes a willingness to innovate and a commitment to completing projects on time and within budget. We were the first large transit system to receive APTA's Outstanding Agency Award in 1983. We are nearing completion of a complicated 8 year sewage treatment pipeline and disposal project with a savings of $31 million off the original $338 million estimate. That project features the world's deepest sewage outfall pipe. The innovative techniques used to install this pipe at an under water depth of 600 feet were recognized through the American Public Works Association's 1987 Outstanding Civil Engineering Project in the Northwest award.

The Downtown Seattle Transit Project is the largest capital project our agency is undertaking in this decade. The Urban Mass Transportation Administration has ranked this project as the most cost effective federal transit investment opportunity in the nation. The project will utilize innovative dual powered buses to transport riders from throughout the region to downtown Seattle. The principal element of this project is the construction of a 1.3 mile $400 million underground transit tunnel through the heart of downtown Seattle. The transit tunnel will have five underground stations. The granite tile under discussion today will be used as floor paving and wall finishing materials in these underground stations.

Metro and the Urban Mass Transportation Administration signed a "full-funding" contract setting forth all the terms and conditions for federal financial support on May 15, 1986. Under this contract, UMTA agreed to finance up to $197 million of the tunnel's construction cost. This amount is slightly less than 50% of the entire Downtown Seattle Transit Project's cost. All federal requirements, including the Buy America requirements, apply to those portions of the project that are federally financed. The contract requires Metro to complete the project and begin service operation by December 31, 1990. The $197 million limitation on federal financial participation effectively forces Metro to finance any cost overruns on the project. Under this contract, Metro has clear financial incentives to complete work on time and within budget while still meeting all applicable federal requirements.

While Metro has demonstrable expertise in procurement and extensive familiarity with UMTA requirements, we are not overly familiar with the procurement of granite tiles. Consequently, we have relied heavily on the professional judgments of consulting engineers, architects and artists for the selection of station finish materials. We received consultant advice from Parsons, Brinkerhoff, Quade and Douglas, TRA Architects and local artists, including Ms. Vicki Scuri on station finish decisions.

Having given you this general background on our agency and the Downtown Seattle Transit Project, let me turn now to the specific, Buy America issues raised in your May 5, 1988 letter. Your subcommittee's letter asked us to address the following seven issues:

1. Metro's General Approach to Buy America -- "Metro's policies, practices and procedures concerning domestic versus foreign source procurement, domestic preference requirements and competitive bidding goals."

2. The Westlake Station Contract (Contract No. 04) -- "The inquiry by Preston, Thorgrimson, Ellis and Holman on Metro's behalf as to Buy America's applicability to granite prior to construction of the Westlake station; Metro's announcement in its Westlake bid specifications that Buy America would apply to granite; Metro's decision that Buy America did not apply to granite in the Westlake station; Metro's decision that Buy America did apply to the remaining stations."

3. Granite Specifications in the Subsequent Station Contracts (Contract Nos. 03, 03C) -- "Metro's decision-making process and criteria for specifying types and sources of granite for the July 1987 general bid, and for the redesigned specifications in December 1987."

4. Buy America Waiver Requests -- "Metro's reasons for seeking and withdrawing a public interest waiver of Buy America, for exploring the possibility of a price differential waiver, and for ultimately seeking a nonavailability waiver of Buy America."

5. The International Trade Commission Action -- "The relevance and relationship to Metro's granite selection process of the trade action against Italian and Spanish granite suppliers by the domestic granite industry."

6. Color Substitutions -- "Metro's criteria for accepting or rejecting submitted substitutions to the granite control samples; specifically the decision to reject Cold Spring Granite Company's substitution for speckled granite for the University Street Station."

7. Relationship of Design to Function -- "The relationship of the architecture and interior design of a transit station to its funotion.

Metro's General Approach to Buy America

Metro's policy on domestic preference in competitive bidding is to comply with federal requirements on federally financed projects in the least costly manner legally available to us. We strive to implement this policy by encouraging several bids on each procurement and by fully informing prospective bidders of applicable federal requirements such as the Buy America provisions.

Our procedures for insuring Buy America compliance begin with provisions in our consultant contracts requiring knowledge of all applicable federal regulations so that draft specifications can be prepared correctly. Draft specifications are then reviewed by Metro's own engineers and procurement specialists. Specifications for UMTA financed contracts contain a standard provision on Buy America in the Legal and Procedural Section (Part A) which reads as follows:

> "This procurement is subject to the Urban Mass Transportation Administration 'Buy America' requirements in 49 CFR part 661.
>
> A 'Buy America' Certificate, Attachment 'H', must be completed and submitted with the bid. A bid which does not include the certificate will be considered non-responsive.
>
> A waiver from the 'Buy America' Provision may be sought by the Municipality if grounds for a waiver exist.
>
> In order to qualify as a domestic end-product, all components and parts must be produced in the United States."

Our internal procedures require a legal review of any deviations from standard specification language like the Buy America provision quoted above.

On complicated construction or procurement contracts, we often will hold a pre-bid conference at which all plan-holders are invited to ask for clarifications before submitting their bids. Finally, we consult freely with UMTA's Regional and Washington, DC offices when questions arise requiring interpretations of federal requirements. For the Downtown Seattle Transit project, we also have formal, quarterly review meetings at which the status of the project is discussed in detail and anticipated problems are identified.

The Westlake Station Contract

Our Westlake Station contract (Contract No. 04) was the second large construction contract let as part of the Downtown Seattle Transit Project and the first involving station finish. It called for the cut and cover excavation of the Westlake Station and Pine Street line segment, the construction of station and line segment structures and the purchase and installation of architectural finishes in the station area. Elevators and escalators were procured separately and then assigned to the general construction contractor for installation. Our engineers estimated this contract would cost $62.7 million including contingencies. The winning low bid was actually $69.4 million including contingencies.

During the preparation of specifications for the Westlake contract, questions arose locally over the applicability of Buy America provisions to granite products that would be used in the station. UMTA's September 15, 1983 Buy America regulations appeared to differentiate between mined and manufactured products. Ms. Catherine Roach, a lawyer employed by Metro's law firm, Preston, Thorgrimson, Ellis and Holman, telephoned UMTA's Deputy Chief Counsel, Edward J. Gill, Jr., to ask if Buy America applied to mined products like granite. Mr. Gill responded with a September 19, 1986 letter indicating that Buy America did not apply to granite because it was a mined product. Based on this interpretation, Metro and its consultant included a statement indicating that granite need not comply with Buy America requirements in its original November 4, 1986 technical specifications on the Westlake contract.

Prospective bidders on the Westlake contract continued to"have questions about the applicability of Buy America regulations after reviewing Metro's specifications. Consequently, Metro sent all planholders on this contract a set of reference documents on Buy America under a December 15, 1986 cover letter. Mr. Gill's September 19, 1986 letter concerning granite was included in this transmittal.

The Subcommittee's letter inviting our testimony suggested that Metro's initial Westlake bid specification indicated Buy America would apply to granite. A close examination of that specification indicates the contrary. Part A of the Westlake specification did include standard language requiring contractors to comply with Buy America. Part B of those specifications, however, where granite was specifically addressed, clearly indicates that Metro did not believe at the time that Buy America provisions applied to granite.

In early February, 1987, Metro received a copy of a January 30, 1987 letter from Deputy Chief Counsel Edward Gill to Ms. Pamela Deese indicating that Buy America did apply to granite if it was subjected to a significant manufacturing process to transform mined granite blocks or slabs into finished granite tiles. Based on this clarification, Metro presumed Buy America would apply to granite tile in subsequent station finish contracts.

Granite Specifications in Subsequent Station Contracts

Granite tile was also specified for use as floor paving and wall finish in Metro's subsequent contract for the University Street, Pioneer Square and International District stations (Contract No.

03). Metro's management was concerned that the higher than anticipated cost of the Westlake contract might be repeated in other station work. Station finishes were discussed as a possible source of excessive costs. At that point in time, however, the design of these three stations had undergone extensive local review by the Seattle Design Commission, the International District Special Review Board, a Metro Council Arts Subcommittee and a Downtown Seattle Association review committee. Redesign would add design costs and additional potential costs due to delay. Consequently, Metro chose to advertise the No. 03 station contract on May 11, 1987 but with a schedule of deletable alternatives Metro could call on to reduce the contract's cost.

As with the Westlake contract, the No. 03 station contract specified granite colors by brand name and source of known supplier. While Metro attempted to specify more than one acceptable source, the original No. 03 contract specifications identified the Cold Spring Company as the only pre-established acceptable supplier of granite veneer tiles in five of eleven color shades and of granite pavers in three of eleven color shades. In only one other case involving a granite paver shade supplier by the Rock of Ages Company was a single company out of the nine companies involved identified as the only pre-established acceptable supplier. The No. 03 contract specification did allow for post award color substitution but made no guarantees about Metro's willingness to approve color substitutions after the fact.

Metro indicated to all prospective bidders on the No. 03 station contract that Buy America would apply to granite tiles procured by general contractors as part of that effort.

When Metro opened the No. 03 contract bids on July 2, 1987 we were greatly disappointed. Of four bids received, the lowest was $89.5 million; an amount that exceeded our estimate by roughly twelve million dollars. As I mentioned earlier, federal financing for the Downtown Seattle Transit Project had a fixed upper limit. Therefore, we faced the prospect of financing all of these extra costs from local sources.

After consulting with several local elected officials on our governing board, the Metro Council, we chose instead to reject all bids and conduct an extensive value engineering effort to reduce costs. Conversations with general contractors subsequent to bid rejection indicated our attempt to hold down costs for station finishes though a schedule of potential deletions had not worked because contractors included much of the cost of station finishes in the base part of their lump sum bid to protect their profit margins. The general contractors involved also told us that granite tile procurement fell outside their standard, heavy construction expertise and that they had increased their estimates in this area accordingly. Consequently, one of our first value engineering decisions was to bid granite tile supply as a separate contract so that only those firms with expertise would compete on this particular item.

This separate granite tile supply contract was named Contract No. 03C.' In the redesign effort, Metro's consulting architects and artists were asked to substitute concrete for granite finish, to reduce the number of tile cuts and colors to foster standardization, and to ensure the tiles could be obtained from more than one source. This latter criteria stemmed in part from oral comments Metro had received on how heavily slanted the original No. 03 contract specification had been towards the Cold Springs Company. Metro's architect and artist were also cognizant of criticisms received from review committees about the cold feeling of the original University Street Station finishes.

Metro's consulting architects and artist responded to these criteria by reducing the number of tile cuts and shades and by allowing for a pre-award substitution process. While pre-award granite substitution would have been unmanageable in the earlier, larger contracts, Metro and its consultants hoped this procedure would help maintain open competition and reduce bidder uncertainty.

Buy America Waiver Requests

By the latter half of 1987, Metro was under the clear impression that we would receive granite supply bids from both domestic and foreign manufacturers. Consequently, I asked the UMTA Chief Counsel's office to confirm my understanding of the Buy America waiver provisions. Both the former UMTA Chief Counsel, Joseph La Sala and his Deputy Chief Counsel Edward Gill told me that UMTA would not approve a Buy America waiver on public interest grounds in this case. They indicated further that since a domestic manufacturer was available, the only potential grounds for a waiver would be a cost differential of 25% or greater in actual bids received. They encouraged Metro to bid the work out and let the competitive process determine who would supply granite.

I briefed Metro's senior managers on this guidance from UMTA. Since we knew of the Cold Springs Company's interest in this contract and were confident of their ability to perform in a timely manner, Metro's management proceeded assuming we would award the No. 03C contract to Cold Springs if their bid was within 25% of their foreign competitors. Our concern over timely delivery of this rebid procurement was paramount. While the cost of granite was a concern, the potential cost exposure in the larger station construction contract from a poorly performing granite supplier or a slow response from UMTA on a waiver request was a much greater concern.

As the bid opening on the No. 03C contract approached, several foreign vendors asked Metro's procurement specialist to request a public interest Buy America waiver on their behalf. Unbeknownst to the agency's senior management, a public interest waiver request was submitted. When I learned of this letter, I immediately telephoned Mr. Edward Gill and asked him to disregard the request. To the best of my recollection, these conversations took place during the second week of January, 1988.

On January 26, 1988 bids were opened on the No. 03C granite procurement contract. Although several bids were received, none was responsive. Several bidders failed to include a bid bond which automatically excluded them. The Cold Spring bid was non-responsive in terms of a particular stone, "Deer Island" which had been disallowed in the substitution process and because the company chose to unilaterally change the specific quantities of various tiles Metro requested in its bid documents. Metro rebid the granite tile procurement and opened the following four bids on February 9, 1988:

Bidder	Bid Amount	Domestic or Foreign
Quadra Stone, Ltd.	$1,834,418.02	Foreign
Carlo Mariotti, Inc.	$1,848,271.00	Foreign
Dal-Tile, Inc.	$1,956,722.40	Foreign
Cold Springs Granite Co.	$2,539,534.00	Domestic

The Cold Spring Company ignored our denial of their bid protest on the color substitution question and submitted an identical bid, once again altering our specified quantities. Their second bid continued to be non-responsive in two ways.

On February 25, 1988, I wrote to Mr. Terry Ebersole in UMTA's Seattle Regional Office requesting a Buy America waiver on the grounds of no available domestic manufacturer. By this time, I had learned of the International Trade Commission imposition of countervailing duties on Italian granite tile suppliers. I understood those duties to be 8% of product value. We viewed these duties to be a cost burden our suppliers would bear under terms of our contract. In any event, the bid of Carlo Mariotti, Inc. appeared to meet the 25% differential rule even if these duties were added.

The non-availability of domestic manufacturer grounds appeared the most straightforward, so I requested the waiver on that basis.

The International Trade Commission Action

Our selection of granite for the Westlake and No. 03 station contract occurred prior to our knowledge of any trade action against Italian and Spanish manufacturers. Mr. John Milne from the Cold Spring Granite Company informed our architectural consultants of this action on September 24, 1987 but did not explain its significance. Our architects and consulting artist informed me and the members of the Subcommittee staff who visited Seattle two weeks ago that this information had no bearing on their selection of colors for the No. 03C contract specifications. We assumed and continue to assume that the Cold Spring Company could obtain granite block from Italian quarries for manufacture in the United States.

Color Substitution

In response to the suggestions of several vendors, including Cold Spring Granite Company, Metro decided to review and either approve or reject proposed substitute tiles prior to award of the No. 03C granite procurement contract. During the value engineering exercise in August, 1987 for example, Cold Spring Granite had suggested their "Sierra White" stone could be substituted for "Bethel White" for considerable savings. In the original No. 03 station construction competition, however, we understood Cold Springs provided only higher priced sub-bids for "Bethel White" to general contractors because it did not want to gamble on post-award color substitution approvals.

Metro's December 7, 1987 solicitation for bids on the No. 03C granite procurement contract let all bidders know that substitutes would be reviewed and either approved or rejected on both a pre-award and post-award basis. All substitutes were required to meet the same American Society for Testing and Materials testing standards for physical strength and durability. As with stones already pre-approved in the specification, all substitutes required identification by trade name and quarry or supplier.

Questions of color suitability were resolved initially by the professional architects and artist who designed the station finish pattern. Their professional judgment was deemed the most appropriate means of determining whether a particular color substitute would seriously undermine the effect of the overall design pattern. Cost was not a criteria in the pre-award color substitution process since no price quotes were available at the time.

Our consulting artist, Ms. Vicki Scuri, and the head of our consulting architectural/engineering team, Mr. Edward Elliott were most heavily involved in reviewing proposed color substitutions including Cold Springs proposed speckled tile substitution at University Street Station.

I asked Ms. Scuri last week about her review of color substitutions at University Street Station. She indicated that 10,000 square feet of concrete surface had been added to the station finishes in lieu of more expensive materials in the redesign effort. Consequently, she was very concerned about color substitutes that failed to provide a good contrast to concrete. She also emphasized the importance of each of the four colors in the speckled tile maintaining distinction when viewed at a distance. She stated emphatically that she did not attempt to exclude any bidder during either the redesign or color substitution process.

I shared Ms. Scuri's January 21, 1988 review letter with the Subcommittee staff who visited Seattle in April. That letter discusses the professional judgments made on color substitution in greater detail.

The Relationship of Design to Function

The final issue your Subcommittee asked us to address was the relationship of the architecture and interior design of a transit station to its function.

We at Metro are not experts on this subject. We proceeded on the assumption that our underground stations should be well lit and attractive. A cursory review of transit stations around the world suggests these criteria are always important. We believe the potential for longer waiting times in our bus tunnel stations than experienced in average rail transit stations made these criteria especially important in our case. We also have occasional periods of dark, cool, damp weather during which a well lit, warm-feeling station would be welcomed and could help us attract even more transit riders.

Conclusion

In summary, Mr. Chairman and members of the Subcommittee, I believe Metro followed Buy America requirements when procuring granite for station finishes in the Downtown Seattle Transit Project. We did not attempt to exclude any qualified bidders. We assumed Cold Spring Granite Company would submit a responsive and responsible bid on the No. 03C granite procurement contract. In light of Cold Springs' excellent reputation for on-time, quality workmanship, we would have gladly awarded the granite procurement contract to them had they submitted a responsive bid at a price within 25% of the lowest foreign source manufacturer.

Mr. OBERSTAR. The subcommittee will stand in recess pending this vote, which will be about 12 minutes, and then we will continue.

[Recess.]

Mr. OBERSTAR. Our final panel of witnesses today include the Urban Mass Transportation Administration, represented very ably by Administrator DelliBovi.

Mr. DelliBovi, would you identify your associates, and then would you all rise and take the oath.

TESTIMONY OF ALFRED A. DELLIBOVI, ADMINISTRATOR, URBAN MASS TRANSPORTATION ADMINISTRATION (UMTA), ACCOMPANIED BY EDWARD GILL, JR., DEPUTY CHIEF COUNSEL; THEODORE A. MUNTER, ASSISTANT CHIEF COUNSEL, PROGRAMS DIVISION; HELEN KNOLL, REGIONAL COUNSEL, DENVER REGION

Mr. DELLIBOVI. Mr. Chairman, appearing with me today is Edward Gill, Jr., UMTA's deputy chief counsel; and Theodore A. Munter, the assistant chief counsel for the programs division; and Helen Knoll, who is our regional counsel in the Denver region and has been the acting regional counsel in the northwest region as well and was in that position during the time of this matter.

Mr. OBERSTAR. Thank you.

We welcome you to the hearing. Would you all rise and raise your right hand.

[Witnesses sworn.]

Mr. OBERSTAR. Thank you.

Unfortunately, there is another vote in progress. I think this is the vote on final passage on pending legislation. Rather than begin and interrupt testimony, The Chair would like to take a recess and cast this vote and return so we can conclude in an uninterrupted fashion. We understand this will be the last vote of the day.

[Recess.]

Mr. OBERSTAR. The subcommittee will resume its sitting.

At this time we are ready to receive the testimony of Mr. DelliBovi and his associates.

Mr. DELLIBOVI. Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you very much for being with us and for the extensive preparation you have made in anticipation of this hearing and for providing us with the testimony in advance.

Mr. DELLIBOVI. Thank you, Mr. Chairman and members of the subcommittee. I am pleased to have this opportunity to appear before you to discuss the Urban Mass Transportation Administration's implementation and enforcement of the Buy America program.

Appearing with me today is Edward A. Gill, Jr., UMTA's deputy chief counsel; and Theodore A. Munter, the assistant chief counsel for the programs division; and Helen Knoll, our regional counsel who is based in our Denver office but whose responsibilities include grantees located in the northwest, including the State of Washington and, of course, the city of Seattle, King County and Seattle Metro.

The Surface Transportation and Uniform Relocation Assistance Act of 1978 included a Buy America provision applicable to the

UMTA program. That provision was not an absolute prohibition against the procurement of foreign products but rather it established a preference for products mined, produced, or manufactured in the United States and applied to all contracts of UMTA grantees of over $500,000.

UMTA's implementing regulations for this provision required each bidder to provide a certificate with its bid indicating that it would comply with the requirements or listing those items it would be supplying which would not comply. The regulation included the exact language of the required certificate.

The regulation also provided that if UMTA initiated an investigation in response to a request for an investigation, the successful bidder had to document its compliance with the requirements. If UMTA determined that the bidder did not comply with the requirements, the bidder would be required to substitute sufficient domestic materials to meet the terms of the original certification.

The Surface Transportation Assistance Act of 1982 made significant changes to the Buy America requirements by eliminating the $500,000 threshold for applicability and setting up essentially two separate programs. One governed the procurement of steel and manufactured products and the other governed the procurement of rolling stock and certain kinds of enumerated associated equipment such as traction power, train control, and communications equipment.

As a result of the statutory changes and UMTA's experience with its investigations, UMTA issued new Buy America regulations in 1983. These regulations again required bidder certification of compliance but did not include exact language for the required certificate.

In 1986, at the request of both grantees and suppliers, UMTA added to the regulations specific language for the required certificates.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 made still further changes to the Buy America requirements. The principal change was to require that 50 percent of the components' subcomponents for buses and other rolling stock be of U.S. origin in order for the component itself to be considered to be of U.S. origin.

In addition, the domestic content requirement for buses, rolling stock, and associated equipment will be increased from 50 to 55 percent October 1, 1989, and to 60 percent effective October 1, 1991, except that any company that has met the existing Buy America requirement would be exempted from these increases for all contracts entered into before April 1, 1992.

Finally, the rolling stock price differential waiver was increased from 10 percent to 25 percent. UMTA is currently preparing a notice of proposed rulemaking to revise its regulations to reflect these changes.

Now, as you know, the Buy America requirements also apply to the Federal Highway Administration's grant program. Yet, Federal Highway Administration's application of the requirements differ from UMTA's because of the different nature of the two programs. A significant portion of UMTA's funds are used for manufactured products. This is not the case with the Federal Highway Administration's. Because the amount of foreign manufactured products used by recipients of Federal highway funds is virtually de minimis, the Federal Highway Administration officials concluded it was not necessary to impose the Buy America requirements on the procurement of manufactured products by contractors of its grantees.

Turning now to program enforcement, between 1982 and 1986 UMTA conducted a number of investigations of compliance with the Buy America requirements by its grantees. A major problem in those investigations was determining whether certain components were being manufactured in the United States. The recent statutory inclusion of subcomponent should alleviate this in the future.

Determining whether certain components were manufactured in the United States for purposes of compliance with the Buy America requirements was the key issue UMTA faced in the Sacramento/Siemens case. I know the subcommittee is familiar with that investigation, but I believe it is useful to highlight some aspects of that investigation along with our ultimate findings.

In September of 1983 the Sacramento Regional Transit District entered into a full-funding agreement for construction of a light rail transit system. Siemens Energy and Automation, Inc. bid on and was awarded a contract to manufacture 26 light rail car vehicles for that new system. At the time Siemens entered its bid, it also signed a certification saying that the manufacturer of the rail cars would comply with the Buy America requirements.

It was later brought to UMTA's attention by its project management contractor that Siemens was not in fact complying with the Buy America requirements. UMTA conducted an investigation and on March 3, 1986, issued a finding that Siemens was not in compliance with the Buy America requirements for the procurement of rolling stock because substantially less than the required 50 percent of the cost of the components of the rail cars was of domestic origin. At the time UMTA issued its findings, Siemens had completed work on 15 of the 26 rail cars.

Both Sacramento and Siemens requested that UMTA reconsider its decision. After lengthy negotiations, UMTA, Sacramento, and Siemens entered into a settlement agreement. The purpose of the agreement was to allow the Sacramento light rail transit project to proceed, to establish for the record an admission by the investigated party that a violation of the Buy America statute and regulations had occurred, and to ratify a compliance plan for the 11 rail cars not yet manufactured.

The settlement agreement required that the remaining 11 rail cars be manufactured in compliance with the Buy America requirements and expressly stated that the 15 rail cars already built were not manufactured in compliance with Buy America requirements. However, it would not have been in the public interest to require Siemens to disassemble the 15 completed rail cars. The greater public interest was in the expeditious completion of the Sacramento light rail transit project.

UMTA's decision not to require disassembly of the 15 completed rail cars and insist on compliance with the Buy America requirements was an exercise of the agency's discretion. The practical effect of such an exercise is the equivalent of a prosecutor's decision not to prosecute.

It is important to emphasize that an agency's exercise of discretion differs fundamentally from a grant of a waiver. A waiver is an express excusal from compliance with the law that is granted prospectively. In this instance, UMTA, one, insisted on prospective compliance with the law; and, two, exercised its inherent powers regarding the choice of sanctions for noncompliance.

It is my firm belief that with the agreement UMTA enforced the Buy America requirements. Moreover, the settlement agreement is now an important precedent in UMTA's enforcement of the Buy America program.

Turning now to the lessons learned, we consider that the most important impact of the Siemens investigation and subsequent UMTA findings was to significantly raise the level of consciousness of manufacturers concerning compliance with Buy America requirements.

Because of the vast differences in the products being supplied to UMTA grantees and, more importantly, the various manufacturing processes used by different manufacturers of the same product, UMTA has had an extremely difficult time crafting exact definitions and requirements in its regulations. The findings of the Siemens case brought this issue to light and resulted in a number of rail car suppliers seeking guidance from UMTA concerning their manufacturing procedures before those procedures were implemented.

In addition, UMTA was able to gain valuable experience which UMTA is taking into consideration in revising and clarifying the Buy America regulations. During the course of the Sacramento Siemens investigation and the subsequent enforcement of the settlement agreement, UMTA conducted a number of site visits to facilities being used by Siemens and its subcontractors. These visits emphasize the fact that desk audits of compliance with Buy America requirements are not always sufficient to determine if there is actual compliance. This hands-on experience also has given UMTA insights which it will use in revising the Buy America regulations.

Since the Siemens case, UMTA has made a conscious effort to ensure that its determinations are given wide dissemination and that there are not conflicting interpretations of the regulations. UMTA uses its regional offices to ensure that its grantees are aware of the requirements and UMTA's interpretations and enforcement of them.

Under the existing statutory structure, the principal sanction for noncompliance with the Buy America requirements is the loss of Federal funds. I firmly believe that this is the correct sanction. The obligation to ensure that a supplier is complying with the Buy America requirements along with all other Federal requirements rests with the recipient of the Federal funds. In this regard, a new requirement of the Surface Transportation and Uniform Relocation Assistance Act of 1987 should have a major impact in ensuring compliance with Buy America requirements.

Specifically, section 319 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 directs the Secretary to issue regulations requiring preaward and postdelivery audits of rolling stock purchases made with UMTA funds. One of the three required elements of the preaward and postdelivery audits is a check for compliance with the Buy America requirements. The other two required elements are Federal motor vehicle safety requirements and the grantee's own bid specification requirements.

Section 319 specifically states that manufacturer's certification of compliance with Buy America requirements will not be sufficient and that independent inspections and auditing shall be required. Since a supplier's compliance with the Buy America requirements must now be fully and independently documented prior to award of a contract, it is expected that the number of UMTA enforcement actions regarding rolling stock procurement will be reduced, if not altogether eliminated.

UMTA expects to serve in an advisory capacity if any questions regarding compliance arise during the preaward audits. Once a contract is awarded, the postdelivery audit requirement will ensure that grantees insist that their suppliers continue to comply with the Buy America requirements because a consequence of noncompliance with the Buy America requirements is the loss of Federal funds.

The use of in-plant inspections during the manufacturing process is one option UMTA grantees will likely use to monitor compliance. In addition to the Buy America amendments, UMTA is preparing another notice of proposed rulemaking to implement this preaward and postdelivery check on compliance with Buy America requirements.

While UMTA has been unable to quantify the economic impact of the Buy America requirements, I believe that as a result of the Buy America requirements, manufacturers of major items such as buses and rail cars have increased their utilization of American component suppliers. UMTA expects that the latest amendments to the Buy America statute will increase this usage of American suppliers further.

The Surface Transportation Assistance Act of 1982 specifically allows States to enact Buy America requirements that are more restrictive than the Federal requirements. To date, we have not encountered any difficulties with this provision. For example, Pennsylvania has a domestic steel products provision which was recently revised to provide that compliance with the Federal requirements would be presumed to be compliance with the State requirements for the procurement of rolling stock.

Mr. Chairman, this concludes my prepared remarks this afternoon, and we would be pleased to answer any questions that you may have.

Mr. **Oberstar**. Thank you very much for making those remarks and observations for the committee.

I appreciate the comments, particularly on page seven, as to the commitment by UMTA to undertake a conscious effort, as you described it, "to ensure that determinations are given wide dissemination and that there are not conflicting interpretations of the regulations."

That certainly is a strong recommendation of GAO. It follows from the testimony presented by other witnesses.

Could you expand upon that statement? What do you mean by "wider dissemination"? How is that going to be done? What is going to be the interaction between the central office, regional offices, and grantees?

Mr. DELLIBOVI. Well, we are undertaking an overall effort to better codify and centralize UMTA guidance, requirements, rules, and regulations. It is one of the management initiatives that I brought to the agency. The agency is 21, 22 years old now. A great body of guidance, advice, memoranda, written letters and so forth had accumulated during that 22-year history, in addition to the statute which itself had changed, and rules and regulations.

Our first effort has been to collect all of that in one set of books that will be distributed to all of our regional offices and all of our grantees so that we are all singing from the same choir book, if you will. And that is step number one that is under way.

Along with that are some training programs designed for both our headquarters and field staff. This has to do with the overall UMTA requirements.

Specifically, with regard to Buy America, I would ask Mr. Gill to comment.

Mr. GILL. Mr. Chairman, we have looked at a couple of ways of doing this, specifically, through the Federal Register. For example, last year we rendered a decision regarding the applicability of Buy America to tires for buses, and obviously every single transit authority in America would be affected by that.

So, we published a notice of that decision that we made—it was about a year ago—in the Federal Register, and that was very valuable because all grantees do have access to the Federal Register.

We are also considering using the Federal Register for a digest of opinions such as, for example, concerning the results of investigation, and publishing that in the Federal Register.

Mr. OBERSTAR. The rulings that have been made in specific cases, GAO has said, should be disseminated to regional offices and to grantees. Is that part of your plan also?

Mr. GILL. Yes, Mr. Chairman. Every decision we make is sent to each one of our regional offices, and they, in turn, disseminate that information to their grantees.

Mr. OBERSTAR. You have only one person in charge of Buy America in the administration. By "administration," I mean UMTA, Mr. DelliBovi. Do you have plans to increase the number? Do you have any plans, as was discussed in the earlier testimony, to station additional personnel or designate personnel in the regional offices to serve as contact points for Buy America?

Mr. DELLIBOVI. Mr. Chairman, we have more than one person involved and responsible for Buy America activities. We have assigned to each of our regional offices one attorney. In most cases there is an attorney located exactly in that office; in others there is an attorney located in the field, as is the case with Ms. Knoll. Her work station is Denver, but she covers the States serviced by our Denver office and the Seattle office as well. She would be the first line of contact with regard to Buy America. She has counterparts in each of our other field offices.

Now, we do have in headquarters a deputy chief counsel who is the point person for Buy America inquiries. There are others on our staff in headquarters who work regularly with Buy America matters, and together they are all familiar with the Buy America requirements.

Mr. Gill, who is the deputy chief counsel, is the resident expert in headquarters, but the others are familiar to a lesser degree with the requirements. And certainly, any of those people are able to give adequate advice in the broad majority of cases that come to our attention.

Mr. OBERSTAR. Well, that is helpful to hear.

Ms. Knoll, when you get a question about Buy America issues, are you able to resolve it yourself?

Ms. KNOLL. Frequently, yes. But if I feel it's a case of first impression, something I haven't heard about before, a novel issue, I would call Mr. Gill. That is, how our chief counsel's office is structured. There are specialists in various areas within the chief counsel's office in D.C. We regional people are generalists, and we handle questions of all types. But where we need an expert opinion, we will touch base with the person in D.C. who has that expertise. With respect to Buy America, it's Mr. Gill.

Mr. OBERSTAR. So, you don't have anybody in your regional office who is specifically assigned to Buy America. But do you have a training program? Is there some sort of guidance that is given to regional counsel personnel before they assume their duties or while they are in service?

Ms. KNOLL. There are a number of ways we might be trained. First of all, of course, just by reading, by keeping up with the decisions and the regulations as they come out.

We also review pending regulations, so we even see these regulations before they become final, and get some familiarity with them that way.

We also have, and will be having it next week, annual meetings where all the regional counsels come together and people from the chief counsel's office advise us in their special areas. I am sure we will be hearing from Mr. Gill next week while we're all together in one place.

We do provide training for our grantees also on Buy America. It has been a topic at every single one of the grantee meetings that we have held in my region, and we hold them at least annually so that we can update our grantees about Federal requirements as they have been updated during the year.

We also disseminate regional management bulletins, as we call them, with current events, current regulations, current decisions, and we do try to train our grantees as well as train ourselves.

Mr. OBERSTAR. Well, it seems that more training is required, given the testimony we heard earlier today from the Seattle Metro that there often were wide gaps in their knowledge of the law. It is not that they should be expected to know that law fully, although if they are going to bid, they certainly have to have some familiarity with it.

The Public Law 100-17, the new highway and mass transit law, is much more extensive than previous law and is going to require much greater effort on the part of UMTA in both carrying out its responsibilities and in providing guidance for grantees. So, I suspect you're going to have to intensify your effort in training and bringing personnel up to speed.

Mr. DelliBovi. Mr. Chairman.

Mr. Oberstar. Yes?

Mr. DelliBovi. We are clearly working to that goal within UMTA for our people, and we respond to inquiries and requests for information. In terms of our grantees, it is their responsibility to familiarize themselves with the requirements that apply to the program, and we certainly are more than willing to work with grantees large and small in doing that. But they have to reach out. It's like the old thing with the horse, you can lead them to the water but you can't make them drink.

Mr. Oberstar. You can make them drink because you have the law.

Mr. Gill, how did you determine that granite as a mined product was exempt from Buy America when the officials from Seattle Metro first inquired? Did you ask how this granite was going to be used and what its application would be?

Mr. Gill. Mr. Chairman, the question that was presented to me in, September of 1986 was whether or not the Buy America requirements of the Surface Transportation Assistance Act of 1982 applied to mined products. I was not given information as to the nature of the granite as far as it being a tile, which was presented to me afterwards.

I inquired solely as to whether it was a mined product, and that was the response I received from counsel, outside counsel. The reason that it was asked is because the 1978 Buy America law clearly applied to mined products, whereas in 1982 the word "mined" was dropped.

Mr. Oberstar. How did you come to a determination that granite is a mined product?

Mr. Gill. The question that was specifically asked was: Is a mined product subject to Buy America? Several transit authorities actually use large pieces of granite as paving stones, and they really don't do anything to the granite except take it out of the quarry or the mine and bring it to the transit authority or bring it to the site.

Mr. Oberstar. There is a process that is applied to the stone when it's taken out of the ground. It isn't just taken from the ground?

Mr. Gill. We don't consider that a manufacturing process, Mr. Chairman.

Mr. Oberstar. What do you consider to be a manufacturing process?

Mr. Gill. The activities that take place on that stone similar to the activities that are listed, the cutting, the polishing, the shaping, the pointing—all of those activities would be considered manufacturing processes. That is the second opinion rendered to counsel for Cold Spring in January of 1987 which specifically distinguished those two types of products.

Mr. Oberstar. We have a September 19, 1987 letter in response to the law firm representing Seattle Metro. I am quoting: "This is in response to your inquiry as to whether the Buy America requirements of the Surface Transportation Act of 1982 apply to granite products that will be used in the Seattle bus tunnel project. Section 165 requires in general that no Federal funds may be obligated for mass transportation projects unless all steel and manufactured products used in such projects are of U.S. origin. It is my opinion that since granite is a mined product and does not fall into either of the categories, then the Buy America requirements do not apply to granite products."

You have changed that opinion now?

Mr. **Gill**. Mr. Chairman, I think our January 1987 position clarified this. It doesn't reverse it. If a mined product undergoes a manufacturing process, then it's a simple answer: it then goes from a mined product to a manufactured product.

The information that was presented to me by counsel from Cold Spring in January of 1987 indicated that the granite for the Seattle project would be undergoing several manufacturing processes, as a matter of fact.

Mr. **Oberstar**. So then you came to the conclusion that it is a manufactured product.

Mr. **Gill**. Yes, sir.

Mr. **Oberstar**. All right.

Have you ever seen these products before?

Mr. **Gill**. Yes, sir. I have two pieces in my office.

Mr. **Oberstar**. You do. All right. We won't conduct a test with you and see which one you approve. [Laughter.]

Or which one you prefer.

Yes, you've got a cribsheet on it. [Laughter.]

All right. So, you have seen these, and you now are convinced that this is a manufactured product.

Are there other transit agencies that use granite as a mined or manufactured product?

Mr. **Gill**. As I indicated earlier, Mr. Chairman, I can't identify a transit authority by name, but I know in the past that some transit authorities have used granite curbstones. And to the best of my knowledge, nothing was done to those products other than that they were cut in large lengths out of the quarries and then put right into the ground.

Obviously, there are others that use similar products to Cold Spring's because they were mentioned as being used by BART and MARTA.

Mr. **Oberstar**. Yes.

There was a question raised in earlier testimony about the response, particularly the time it took for you to respond to Cold Spring for clarification. Now, why did it take such a length of time, until after the bids were opened, for your response to come forward?

Mr. **Gill**. There was a period of time of approximately three weeks from the initial inquiry to the second decision that was rendered. First of all, it took some time for me to do some research. Secondly, and, I think, quite ironically, it was the exact same time we were in the process of reviewing the compliance plan for the Sacramento Siemens case, which you can well imagine took up a lot of our time.

Mr. **Oberstar**. Yes.

Mr. **Gill**. It's not an excuse as to why it wasn't given—I think there are a lot of people who would say three weeks for a response from the bureaucracy is good. Unfortunately, it wasn't in this particular time. It wasn't fast enough.

But it did apply, as Ms. Deese indicated, to the future procurements in the Seattle case.

Mr. OBERSTAR. Were you and your staff aware of the timeliness of a decision in this case?

Mr. GILL. It was my understanding that Seattle was going to extend the opening of bids. I was not aware that it was extended to January 28 of 1987.

Mr. OBERSTAR. Mr. DelliBovi, can you explain how UMTA applies the 25 percent price-differential waiver to parts of contracts rather than to overall project contract cost?

Mr. DELLIBOVI. I would defer to Mr. Gill on that.

Mr. OBERSTAR. That's fine.

Mr. Gill?

Mr. GILL. Mr. Chairman, initially we had applied the price differential to an overall contract, and we had received a couple of inquiries from grantees that this was becoming somewhat difficult to apply, especially because we had from 1982 to 1987 actually two price differentials. We had 10 percent for rolling stock and associated equipment and 25 percent for manufactured products and steel.

We had a situation in Buffalo, New York, where they were building a bus garage that actually contained both manufactured products and some types of associated equipment having to do with the rolling stock. It got very confusing because they were going out for bids on a single contract, and the question was asked if we have to apply the price differential how are we going to do it.

We also had a situation in another contract on the West Coast—I can't remember exactly the transit authority—where a similar situation arose.

So, we then looked at the legislative history, we looked at the intent of Congress, and we decided that we would apply the price differential on an item-by-item basis on a single contract. And in some instances, on procurements—some procurements—we literally have a transit authority that is buying 100 items at the same time, and we look at each individual item to see how the price differential should be applied.

Mr. OBERSTAR. Under what circumstances does UMTA approve a public-interest waiver?

Mr. GILL. We have approved very few public-interest waivers. For example, we have approved public-interest waivers for the procurement of prototype vehicles. For example, we did approve one for Seattle, the prototype Breda buses.

The waiver provides that the final assembly of the prototype vehicles can take place in Italy. However, 50 percent of those vehicles still have to be of U.S. origin. We feel it's in the public interest for a prototype vehicle to receive a wavier so that all the testing can be done before the full production starts.

We have granted a public-interest waiver for microcomputers, a combination public-interest/nonavailability waiver, because grantees were finding that the microcomputer industry is such that micro computers that comply with Buy America are just not available in the United States.

Mr. **Oberstar**. Would you give such a waiver for foreign competition to expand the competitive base?

Mr. **Gill**. If the item was available in the United States, we would not grant the waiver, no.

Mr. **Oberstar**. Are aesthetics, artistic considerations, a basis for a waiver?

Mr. **Gill**. Not a public-interest waiver, no, sir.

Mr. **Oberstar**. Thank you.

Mr. **DelliBovi**. Mr. Chairman, I might amplify. The public-interest waiver, we were very cautious in the two that Mr. Gill cited, and we require very convincing evidence that is almost measurable, and certainly the more subjective arguments would be the ones that we would be less likely to accept—we really need proof before we consider it, because we believe it's a very serious step because what it is in fact is waiving a law that was enacted and signed by the President and the Congress.

So, it's not done lightly, and we are very careful—subjective factors become less compelling.

Mr. **Oberstar**. I appreciate your sensitivity to that, and I think that's very important to maintain that attitude of responsiveness to the law and that the law must take priority over these local considerations.

Do you have a feeling that aesthetics were a smokescreen for costs in the Seattle case? I don't think you sat through the entire testimony, so you may not have heard everything. But you probably were briefed by staff who were covering it.

Mr. **DelliBovi**. To be very honest, I must tell you, Mr. Chairman, our grantees have never exhibited a great concern for costs on these projects. [Laughter.]

If you look around—that's why they generally spiral right out of control. So, I would be surprised if this was a smokescreen for cost control, since the history of mass transit projects is total disregard for costs.

You have only to look in the Washington system here that has just become the most expensive public works project in the country. I think the Los Angeles one will probably exceed it.

So, there has been no concern in this industry for cost control, and I don't think that would be a motivating factor.

Mr. **Oberstar**. Well, it certainly is a puzzling case and a very confounding anomaly. I will not pursue that at the moment.

The Chair recognizes the gentleman from Pennsylvania.

Mr. **Clinger**. Thank you very much, Mr. Chairman.

Mr. Gill, earlier today counsel for Cold Spring testified that from conversations with you, she got the distinct impression that aesthetic considerations alone would not be sufficient and that you were very uncomfortable with what was occurring in Seattle. Was her perception of your reaction accurate and if not, what was your feeling about what was occurring in Seattle?

Mr. **Gill**. Mr. Clinger, I think the perception that aesthetics alone would not be a consideration is correct. I believe, as we heard in earlier testimony, especially from Seattle Metro, was that it was aesthetics combined with the transit usage, and it's that consideration.

As I told counsel for Cold Spring in my discussions, if there was a bid protest filed, that that was not my area, and when she sent me the two samples, I said, "I'm glad I am not the one that has to make this decision." So, it was not aesthetics alone. I think it was aesthetics combined with the transit function.

Mr. CLINGER. Well, you've indicated that aesthetics would not be grounds for a public-interest waiver. But it seems to be possible that in the bid specifications aesthetics could be utilized, in the bid specifications to, in effect, eliminate potential bidders on the contract. I am wondering if there is anything that spells out what standards or what criteria are used or what would be acceptable as aesthetic grounds? How does a bidder determine what factor aesthetics would play?

Mr. GILL. If I could defer to the procurement experts on that, please?

Mr. MUNTER. Basically, when a grantee wants to procure something, it has to perform some sort of needs analysis: what does it need? It then puts that into the specification. In this case, what we're calling artistic or aesthetic is what they determined they needed for this particular location in the subway. And they went through a public process and a local process.

UMTA does not enter that process and second-guess its grantees. We are a grant assistance agency that supports local projects. So, we look to the grantees to apply for, design, and develop their projects. We make sure they have controls on them. They go through processes. Here, the city did that.

Mr. CLINGER. So, what you're saying is that if Seattle indicated that they wanted to use a particular granite because they felt that more people would use the system because the design would be a warmer and more attractive, UMTA wouldn't second guess that judgment?

Mr. MUNTER. Virtually all the transit authorities that design this type of facility talk about finishes and that type of thing, and often, as here, there are community groups that have input into that. UMTA does not exclude decisions from its funding. We don't participate in goldplating, but we don't say you can't design the finish of a system.

Mr. CLINGER. As I understand from OMB Circular A-102, the agency should not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. And in effect you're saying you would not consider aesthetics per se a matter of Federal concern?

Mr. MUNTER. It is not primarily a matter for us to decide. We leave the design up to the local system. They determine if they need the subway. They determine to apply for it. We put them through standards and criteria.

Mr. CLINGER. Do you feel, Mr. DelliBovi, that the regulations which UMTA will promulgate to establish the pre-award post-delivery audit procedures are going to be sufficient to eliminate the kinds of problems that were experienced in Sacramento and to Seattle?

Mr. DELLIBOVI. I am confident, Mr. Clinger, that the rulemakings that we are developing are going to eliminate substantially the problems that we have encountered. But I cannot sit before you and say they're going to eliminate all problems. You know, one of the difficulties here is that if there is someone who wants to circumvent a rule or a law or a regulation, they probably will try something and we have to be watchful, and we may find ourselves again having to adjust our rules to recognize what we have not yet anticipated.

But we believe we have anticipated all of the problems that we have seen so far.

Mr. CLINGER. In those two particular instances, the testimony was that there was imprecision about the law or about the regulations, that there wasn't clear guidance as to where they could go, and hopefully that has been remedied.

Mr. DELLIBOVI. Well, they will have much clearer guidance.

Mr. CLINGER. In those areas?

Mr. DELLIBOVI. In those areas.

Mr. CLINGER. Do you have any recommendations for us that you feel should be changed in the statutes that guide you?

Mr. DELLIBOVI. Well, I certainly know that the Administration has consistently opposed domestic-preference legislation, and in our legislative proposals that we presented last year for the reauthorization of the transit program we would have deleted the Buy America requirement. That's the Administration's position.

Now, having said that, if you are not going to follow our advice, my recommendation would be to at least give us as clear a direction as possible. I think that Mr. Gill has pointed out that the omission of the mined product from the 1982 act was clearly something that didn't help us in this case. It almost invited someone who had a mined product outside of the United States to come in, since I am sure that anyone reading the 1982 law comparing it to the 1978 law saw that as an invitation. Why else would the Congress have deleted the term "mined"? And I am sure that that was an invitation.

So, my recommendations would be that if you're not going to follow the Administration's recommendations, at least be as clear as possible so that we who are going to administer these regulations can do so without any ambiguity. And I think certainly there was some ambiguity here because the term "mined" was deleted.

Mr. CLINGER. Well, I think it's fair to say that we are not going to follow the recommendations of the Administration. Since Buy America is in the law and is going to remain there, do you view it as a mandatory requirement that must be enforced?

Mr. DELLIBOVI. Absolutely.

Mr. CLINGER. Not a discretionary requirement?

Mr. DELLIBOVI. We carry out the law and we carry it out to the best of our ability and as clearly as we possibly can. And we respect it, I can assure you of that, Mr. Clinger. Though we might not welcome the provisions, we certainly would enforce them, and if we're going to get them, we trust that they will be as clear as possible so that we can carry them out as effectively as you intended them to be carried out.

Mr. CLINGER. Well, I asked that question because I had reference to a letter that you wrote to Mr. Stangeland where I thought there was at least an implication that UMTA viewed Buy America as being as discretionary and that you had latitude in deciding how the law would be applied. I don't have that reference on hand right at the moment. But we will come back to it.

Thank you, Mr. Chairman.

Mr. DELLIBOVI. If you can find it, I would be happy to discuss it.

Mr. OBERSTAR. Do you wish to find that and respond?

Mr. CLINGER. Well, I am trying to find it here.

Mr. DELLIBOVI. Is it the April 5, 1988, letter from me to Mr. Stangeland?

Mr. CLINGER. Yes—I guess it is the April 5th letter. On the second page it says, "UMTA found that there was no evidence of an arbitrary or capricious decision made by Metro to specify a foreign product or exclude domestic bidders. Under the Buy America requirements, a grantee can specify a foreign product, since the Buy America requirements set forth a domestic-preference standard rather than an absolute requirement that items of U.S. origin be procured."

That gives rise in my mind to the fact that UMTA does not view Buy America as a mandatory requirement but instead views it as giving you or the grantee some discretion as to how to go about whether or not to use the Buy America provision.

Mr. DELLIBOVI. Well, the Buy America provision does provide for exceptions.

Mr. CLINGER. It does provide for limited exceptions, but what you said in this letter was that Buy America is a domestic-preference standard, that all it does is set a standard, that is not to be absolutely applied in every case.

Mr. MUNTER. No. In a procurement, a grantee procurement, we require that there be competition to the maximum extent feasible without exclusion or discrimination. In that very same procurement will be the Buy America requirements. Anyone can bid. Those requirements would be applied to foreign manufacturers in evaluating the bid or in awarding that contract.

So, there's no prohibition against specing an item, that domestic or foreign manufacturers can bid. If there is a need for something, there is no prohibition against specing that item, such as the granite in Seattle.

Mr. CLINGER. The grantee can specify a foreign product. The letter says that.

[Pause.]

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. OBERSTAR. Mr. Gill, I don't mean to belabor the Seattle case, but I do want to clarify some points. You received a letter, hand-carried, from the law firm representing the Cold Spring Granite Company concerning the Seattle bus tunnel project dated January 7, 1987.

The last paragraph of that letter said, "The deadline for bids is January 22. Your immediate consideration is appreciated." While you may consider that less than a three-week response time is good, I think there are many agencies that do much better. I am not down on Federal Government agencies' response. I understand the workloads.

But I also understand that when you see something that has urgency about it, that you would respond.

Mr. **Gill**. Mr. Chairman, I spoke to counsel for Cold Spring on the 22nd. I believe we discussed the fact, and I don't absolutely recollect that we discussed the fact that the bids may have been extended. I really don't remember the complete conversation that we had.

As I indicated, this request did require us to reexamine our original decision.

Mr. **Oberstar**. Yes.

Mr. **Gill**. And it took time.

Mr. **Oberstar**. And the outcome could have affected this whole matter.

Mr. **Gill**. We learned afterwards that it did. In fact, we have taken the position now—that when a question like this comes up, we immediately notify the grantee and request that they hold up bids until they get our decision.

Mr. **Oberstar**. That is the kind of response I am looking for. All right. I mean we can't go back and cure what has happened, but if the agency is showing a measure of repentance, a willingness to cure its problems for the future, there is hope.

Mr. **Gill**. Absolutely. That's what we're doing. And not just now; we've been doing it since then. We have learned.

Mr. **Oberstar**. We have established that aesthetics are not grounds for a public-interest waiver. You have said that unavailability could be grounds for a waiver. How do you determine unavailability? Are there standards?

Mr. **Gill**. Under the regulation, it clearly provides that if an American product, or a product that complies with Buy America and therefore becomes American, is not bid, we presume that the item is unavailable in that instance. The regulation says if no responsive and responsible bid is received offering a domestic product, then the grounds for the waiver will be presumed to exist.

So, if we don't have a situation where a domestic product is bid or, as we had in Seattle where a domestic product was bid but it was found to be nonresponsive, then the grounds for the nonavailability waiver do exist.

Mr. **Oberstar**. Nonresponsive for aesthetic purposes?

Mr. **Gill**. For the purposes of Buy America we really don't get into why it was responsive or not.

Mr. **Oberstar**. All right.

Mr. **Gill**. We did not grant the nonavailability waiver until the bid protest was resolved.

Mr. **Oberstar**. Now, that's an important point. Are there circumstances under which UMTA reviews a grantee's specifications?

Mr. **DelliBovi**. Yes. There are certain circumstances where we do review specifications. When there is a sole-source specification, a single bid situation—and what is the other one—awards to other than the low bidder.

Mr. **Oberstar**. Sole source would fall in the category of unduly exclusionary and restrictive specifications.

Mr. **DelliBovi**. Sole source would fall under the category of specifying, a particular source, either Cold Spring or the other outfit, by name practically, a brand name, saying, "We want that guy's product."

Mr. **Oberstar**. It's interesting that when Seattle was ready to specify the waterjet process for finishing stone, foreign manufacturers objected, saying, "Oh, no, no, that's sole source. There's only one company that can do this, and that's the Minnesota firm."

But when Seattle turned around and said, "Well, we like this speckled stone better than other stones," the shoe was on the other foot. They're bending in the other direction. It was an exclusionary decision by a grantee that worked to the disadvantage of an American industry.

Mr. **DelliBovi**. I am not aware, Mr. Chairman, at that point whether the Minnesota firm then told the grantee that that too was exclusionary. I don't know if they did at that point.

Mr. **Oberstar**. I don't know at what point in time. We would have to go back and check our chronology.

But I think the point of this exercise is to develop an awareness and a sensitivity to this delicate area that has such a profound impact on jobs and industries in the United States. After all, they're the folks who are paying the taxes for these systems.

Mr. **DelliBovi**. Absolutely.

Mr. **Oberstar**. We just want to make sure that in the future we are going to have a set of procedures that will avoid this kind of outcome.

Mr. **DelliBovi**. Well, I believe, Mr. Chairman, that our procedure where we are going to ask the grantees to suspend the bidding process when there are disputes will go a long way to sending a serious message. That plus the Sacramento decision will be very helpful to us in sending a message out to these grantees who might otherwise try to disregard this, the Buy America provisions.

Mr. **Oberstar**. Thank you.

Let us review for a time the Siemens case. How did UMTA come to the decision that it was not in the public interest to require Siemens to bring the 15 vehicles into compliance with Buy America? Why was it determined that it was "more important to expedite completion of the Sacramento light rail transit system," to quote an UMTA decision? What was the authority for that discretion?

Mr. **DelliBovi**. We reviewed the situation, did a legal analysis, and concluded that the disassembly and reassembly of the cars would delay the opening of the project and that it was a higher public interest to move on with the project. We had negotiations going on with Sacramento at the time and were assured, and we felt at the time, that a settlement would be reached that would meet the spirit of the law.

Mr. **Oberstar**. Was the completion of that portion of the project essential for an opening date for some locally developed rationale that was overriding compliance with Buy America?

Mr. **DelliBovi**. There was a desire to open the project. The project opened in March of 1987. That was certainly one consideration. And without the cars they could not open the project.

Mr. **Oberstar**. And without the Buy America provision, American jobs went wanting.

Mr. **DelliBovi**. That was a concern to us, there's no question. The entire Sacramento issue was a very difficult one.

I might add, of course, that on the Sacramento we received an intense amount of pressure from the congressional delegation.

Mr. OBERSTAR. Oh, I have no doubt about it. Yes. [Laughter.]

I can well appreciate that. As a matter of fact, I had some remonstrating to do on the other side of that issue with many concerned about it.

But tell us about UMTA's monitoring of Siemens' implementation of their compliance plan for the remaining 11 light rail vehicles.

Mr. GILL. Mr. Chairman, we had the plans submitted to us during the course of the summer of 1986, and they were incorporated into the settlement agreement that was entered into in November. I believe in December of 1986 Siemens began production of the remaining 11 vehicles.

At that time we asked them, either late 1986 or early in January of 1987, to stop production until we did a complete analysis of what they were doing. During the period of December of 1986 through March of 1987, we did, along with our project management oversight contractor for the Sacramento project, a very, very in-depth analysis of what they were doing, including site visits to three facilities in Pennsylvania where the trucks or the bogies were being assembled: one in Altoona, one in Johnstown, and one outside of Pittsburgh.

There was a team from UMTA that went. There was myself, our senior mechanical engineer in our office of grants management, and a representative of the project management oversight contractor.

Mr. OBERSTAR. That is your plan in place?

Mr. GILL. We did that last year, sir.

Mr. OBERSTAR. You've done it already?

Mr. GILL. And it's all done, because all the cars have been delivered. Yes, sir.

Mr. OBERSTAR. Already done. And you found compliance?

Mr. GILL. Yes, sir. We found that they were in compliance with their compliance plan and they were doing exactly what they said they were going to do. They were using products that originated where they said they were going to be originating from.

Mr. OBERSTAR. How is it that the Sacramento transit authority operated two LRV's that were not in compliance with the settlement agreement?

Mr. GILL. At the time that we were doing this review, they had, I believe, two car sets of bogies that were not in compliance with Buy America that were going to be shipped back to Pennsylvania. The transit authority made the decision to use them, and they never, as correspondence we've made available to staff and to GAO indicated, they never told us that they were going to do that. They never came to us before they made use of those vehicles.

Mr. OBERSTAR. So, for their action there is no penalty that can be applied for failure to comply?

Mr. GILL. Mr. Chairman, last year, I believe it was in—I'm not sure of the exact date; I believe it was May or June of last year—we indicated to them that they were not in compliance in operating those two vehicles. We indicated that was our position that we would not pay for those two vehicles.

They have subsequently written to us and asked that we reconsider that decision and explore other avenues concerning those two vehicles.

Because of a totally unrelated problem, that has nothing to do with Buy America, we haven't given a grant for that project since January of 1987. We still haven't done it, and until this other unrelated project is resolved, this Buy America issue is still outstanding.

Mr. OBERSTAR. So, that matter is still, as you said, outstanding.

Mr. GILL. Yes, sir.

Mr. OBERSTAR. It's unresolved.

If the penalty under the law is not imposed, what signal do you think that will send to other suppliers?

Mr. DELLIBOVI. Well, Mr. Chairman, obviously it will send a signal that the law can be flouted, that it can be disregarded. That is the concern that I have expressed to Representatives Fazio and Matsui, who have argued that Sacramento should receive favorable treatment in this matter.

Mr. OBERSTAR. I applaud your decision to uphold the law and insist that it be complied with. We will support that effort in every way that the committee can. After all, that law should not have been avoided by the transit authority, and if they did avoid it, they did so with full awareness of the possible consequences. And the potential for the future is so serious that I think this stand has to be taken.

Mr. DELLIBOVI. I would say, Mr. Chairman, that I was particularly chagrined by Sacramento for using these two cars because they received a settlement which was, I think, certainly accommodating to them. So, they added insult to injury by then sneaking these two cars into service, clearly violating the spirit of the settlement. Obviously, they secretly did this without advising us.

I believe it was—how did we find out? Was it from GAO?

Mr. GILL. There were two ways we found out. Our PMO contractor informed us, and we read about it in Passenger Transport. [Laughter.]

Mr. OBERSTAR. Not the ideal way to learn about these things.

Mr. DELLIBOVI. No. Well, it should not have happened in the first instance.

Mr. OBERSTAR. Correct.

Mr. DELLIBOVI. But then to be doing it stealthily, know, just clearly shows the spirit was not genuine.

Mr. OBERSTAR. Is Siemens under investigation by UMTA for any other failure to comply with the Buy America provisions?

Mr. GILL. Not for any failure to comply, Mr. Chairman. Under the terms of the settlement agreement, for a period of three years after the settlement agreement, which would be—pardon my math; it was 1986, so it would be the end of 1989—we conduct preaward audits of all prime contracts, and we have two ongoing right now: a rail car procurement in San Diego, and a substation procurement in Philadelphia for SEPTA. In fact, I have just met with Siemens this week on those two procurements.

Mr. OBERSTAR. Is that a privileged matter at this stage?

Mr. Gill. Basically, where it stands at this point, Mr. Chairman, is production is just starting on both of those contracts. We have basically done the desk audits, as we call them.

We have given them the go-ahead. It appears from all the paperwork they've given us that they will be complying. And we will be doing the site visits in the very near future. One of the contracts is a little more ahead of the other one.

But we are monitoring those very closely. Siemens is providing us with information. They changed some of their suppliers, and under the terms of the agreement they notified us immediately. They have been extremely cooperative and very, very responsive on these matters.

Mr. Oberstar. Keep the heat on. It's good to keep them honest.

We heard discussion earlier about the extremes of penalties available as remedies to UMTA. Has debarment ever been used as a remedy for violation of Buy America?

Mr. Gill. No, Mr. Chairman, it hasn't.

Mr. Oberstar. Has debarment ever been used for any other violation of UMTA regulations?

Mr. Munter. Yes.

Mr. Oberstar. Could you draw the microphone closer please? What other types of violations?

Mr. Munter. Contractors being convicted of a crime, fraud.

Mr. Oberstar. Principally criminal actions?

Mr. Munter. Yes, sir.

Mr. Oberstar. Not for any civil action?

Mr. Munter. That's right.

Mr. Oberstar. I see.

Mr. Munter. The Comptroller General's list, we will join them in debarring.

Mr. Oberstar. Thank you.

Mr. Clinger?

Mr. Clinger. Just a few questions, Mr. Chairman.

The 1987 Surface Transportation and Uniform Relocation Assistance Act, requires the establishment of an independent preaward/postdelivery audit to ensure compliance with a number of requirements including Buy America. While the regulations have not been issued I understand that UMTA is considering having grantees conduct that audit. Given the fact that we have seen how subjective some of these things can be and the fact that there has been confusion and misunderstandings in the past—what confidence do you have that the grantees can indeed conduct the audits in any kind of a uniform or consistent way?

Mr. DelliBovi. Well, we haven't made a final decision on that, number one. But I think it is possible for grantees to conduct audits. Generally, in other areas of the law, they will contract with outside reputable auditing firms to do this type of work, and that might be one——

Mr. Clinger. Grantees would?

Mr. DelliBovi [continuing]. Remedy where they would hire—some outside independent firm to conduct the audit for them. That would be one possibility if this provision were enacted.

Mr. Clinger. So, you would have no objections to grantees contracting out that work?

Mr. DelliBovi. Not at all. We encourage contracting out.

Mr. Clinger. But no consideration is being given to, for example, having regional offices involved in this process?

Mr. DelliBovi. Well, we do review our grantees. We perform triennial reviews. We have on these major projects project management oversight contractors who are reviewing the project. And as was mentioned, in Sacramento it was our PMO contractor who was one source of the information that the cars were improperly in use. And our regional staff does visit with them—our project managers visit with the properties. So, there is a sort of oversight role provided in that process.

But specifically, we would view this as added to our routine project management activities.

Mr. Gill. Mr. Clinger, if I might just add, I am not sure you were in the room when Mr. DelliBovi indicated in his opening statement that one of the things we would be looking at while these preaward audits are being done is to serve in an advisory capacity, UMTA in general, the regional offices, the PMO, as the chairman indicated earlier, training sessions and all of that. So, I think that is one thing that we are looking at.

Mr. Clinger. That's what I wanted to get to next. I think that clearly you would have to have some sort of a program to make sure that the people conducting these audits have a clear understanding of what the requirements of Buy America are and that you couldn't just blindly look back and conduct oversight. There should be some preventive efforts made to assure that everyone is on the same wavelength on interpreting and applying the Buy America provisions.

Thank you, Mr. Chairman.

Mr. Oberstar. How many Buy America rulings does UMTA make in a given year?

Mr. Gill. Mr. Chairman, it depends on how you define rulings. We issue waivers quite frequently.

Mr. Oberstar. About how many of those?

Mr. Gill. In the hundreds. Mostly nonavailability waivers.

Mr. Oberstar. Do you have a fairly well established—we discussed this somewhat earlier—definition of nonavailability?

Mr. Gill. Again, Mr. Chairman, using the regulations, whenever we have a situation where we don't have a bid or a grantee doesn't receive a bid offering a domestic item, they will apply for a nonavailability waiver. And it's very routine. You would be amazed at the types of items. We're granting waivers for $300 typewriters, small items like that. For some reason in some situations people just don't bid an American product, even if a purely American product exists.

Mr. Oberstar. Nonavailability depends, to some extent, on whether an American firm is interested enough to submit a bid.

Mr. Gill. Oh, absolutely. Absolutely.

In fact, we have granted nonavailability waivers for very small bus procurements when we know that there are companies that can build a bus, but they just don't bid.

Mr. Oberstar. Do you inquire into how extensive the advertisement for bids is?

Mr. GILL. The requests usually indicate to us how they went through the bidding process, how they advertised and the like. And if they meet the maximum free and open competition, that's satisfactory. Most of them will advertise in trade journals and a thing called the Dodge Bulletin and in Passenger transport. There are a very wide range of vehicles that they use to get the bids, and that information is all submitted to us.

Mr. OBERSTAR. Well, I raise the question—and you have responded to it, indicating that there is a review by UMTA of the extent to which the grantee has advertised.

But I am very familiar with the practices, particularly personnel practices, where a company wants a certain person, and they designate this person as a rare bird, so they can go to Canada or Europe to get the person they want to run their operation. Meanwhile, there are plenty of qualified people in the United States, but the company just doesn't want to go outside its particular area to find that individual.

I am very familiar with ingenious ways of circumventing the law. I would not want to have American jobs lost just because of some local grantee's ability to smokescreen.

There was confusion in the Sacramento case over the definition of some very key items: manufacturing as compared to assembly; subcomponents versus components.

Can you give us your understanding and definition of manufacturing and assembly, subcomponent and component, and how these terms are defined so that grantees and bidders understand and there isn't confusion?

Mr. GILL. Mr. Chairman, without question, that's the most difficult question with Buy America, trying to define what the manufacture of a component means.

Mr. OBERSTAR. That would be essentially a legal definition.

Mr. GILL. It's a very legal one. We have looked to the GAO decisions to help us in that area. There are very legalistic terms such as "increasing value," "creating something that didn't exist before," and concepts like that.

As we have indicated in the past, the industry that is covered by this is manufacturing a lot of different products.

Our proposed regulations which would implement the 1987 Surface Transportation and Uniform Relocation Assistance Act also contain revisions to the existing regulations based on the experience we have gained, and one of the issues that we are addressing concerns manufacture of components. Hopefully, we will receive a lot of comments on that. We have proposed some tightening up of the language, and hopefully we will receive a lot of comments on it. It's extremely, extremely difficult to define what it means.

I think in our discussions with GAO on the Siemens case it was indicated, and as they testified this morning, that was the principal issue that we were faced with.

Mr. OBERSTAR. Is it possible to have a generic definition that applies to all?

Mr. GILL. In my opinion, no, sir, it isn't. It's almost a case-by-case application because of the differences in the items being procured. But we are certainly trying. We are trying to make it as generic as possible, but it's still going to require some finetuning.

Mr. **Oberstar.** I can well appreciate the complexity. I remember years ago in the Nixon Administration when the President imposed price controls, and there was a need to make definitions for determining price, like what constituted agricultural products. It was subject to very, very wide interpretations and there was a lot of confusion and angry people and hurt businesses.

In this case, it affects the very essence of the law. We will want to follow your progress on this matter.

Mr. **Gill.** I think one thing, Mr. Chairman, is that the inclusion of the term "subcomponent" for coverage under Buy America will make a big difference because that has expanded what is meant, and that will address a lot of the issues that have been raised.

Mr. **Oberstar.** Is it clear as to what is a component and what is a subcomponent?

Mr. **Gill.** No, it isn't. If you look at the language in the Conference Report on the 1987 law, there is a noninclusive list of components for rail cars, and one thing that is listed is the truck or the bogie, which I believe you are very familiar with.

Mr. **Oberstar.** Right.

Mr. **Gill.** Also listed is the gearbox and the propulsion motor which are part of the truck in the industry. It's listed as two separate components. So, that has created a little bit of confusion in that area. Again, our proposed regulation will address that issue and ask for comments on that.

Mr. **Oberstar.** That probably is the best way to do it.

Mr. **Gill.** I think we have to do it that way.

Mr. **Oberstar.** Publish a proposed rulemaking and let industry respond and see what they come up with.

Mr. **Gill.** Yes, sir.

Mr. **Oberstar.** I urge you to do that.

Under the 1982 act, the origin of subcomponents of rolling stock and certain equipment was immaterial. How did UMTA then determine whether or not a component was domestic?

Mr. **Gill.** If it was manufactured in the United States, it was considered domestic, regardless of the origin even of its subcomponents—I believe there was testimony earlier today from the RPI panel—indicating that this is correct. If you had a component manufactured in the United States of 100 percent foreign subcomponents, it did become a domestic component. That is no longer the case; it can't happen anymore under the new law.

Mr. **Oberstar.** That was my question, and you responded in advance. I am glad to hear that. I think that's very, very important. It's one of the ways in which the law can be avoided.

What is there to prevent a company from inflating or overstating costs of domestic components and understating the cost of foreign components?

Mr. **Gill.** One of the things that we look at—and I have actually done this in investigations—we look at bills of lading and we look at their customs documentation. I am not a customs enforcement officer, but if they're lying on their customs documentation, there's really not much we can do about it. We have to go on what they've given us.

In a lot of instances, companies are buying products, subcomponents, from other companies. And we look at the bills.

Mr. **Oberstar**. Is fair market value one of the considerations you look at?

Mr. **Gill**. No. We actually look at what they actually pay for it. If they have a bill that says it cost a dollar, then we consider it's a dollar, that's the value.

Mr. **Oberstar**. Mr. Clinger raised a point earlier about bidding in, a familiar practice engaged in both by U.S. firms and foreign companies, who come in and bid an unrealistic price that bears no relationship to real market conditions, in order to get their foot in the door. One of the devices that helps foreign manufacturers do that is this value-added tax that was referred to in testimony earlier today.

Now, I happen to be somewhat of a student of European economics. I got my master's degree in Belgium at the time of the formation of the European Common Market. I continue to follow developments there very closely and I know how the European Governments use the tax structure and other nontariff devices to advance their own industrial purpose. They would rather have unemployment in the United States, believe me, than have it in their country, because when you have widespread unemployment, it creates labor unrest, general strikes, and can shut down a whole country.

The Belgian Government would rather dump its excess steel production in the U.S. and lose money doing so, but keep people working, than have a general strike on their shores.

So, this whole combination of devices—they have been at it a lot longer than we have, and have 200 or 300 years' more experience in imposing shams and subterfuges in order to penetrate markets. They are very good at it.

I just want to see that there is some sensitivity to looking behind the cover at the real price and the real factors involved in pricing of foreign goods.

What is your process for making a determination on enforcement options in cases of noncompliance with Buy America?

Mr. **Gill**. Whenever we conduct an investigation and find that a manufacturer is in noncompliance, under the regulations they are first offered the opportunity to come into compliance by substituting, in the case of rolling stock, substituting sufficient American components to come into compliance. That's what happened in the Sacramento case.

Another option they have is to drop out of the bidding. We had one instance of a small bus procurement where we found that the low bidder was not in compliance with Buy America. We told them they had to take appropriate steps. And their step was to drop out. They just dropped out. They were not interested in the bid.

We have actually had two instances—well, we've had one instance where we initiated the investigation, and the response we got was for the bidder to pull out without giving us any information. In another one, a bidder certified compliance. We initiated an investigation, and they never provided us with any information. The transit authority found them nonresponsive and threw their bid out.

Once we get to the point if they can't come into compliance, frankly, we begin to negotiate with them. We have only had two of those cases: one, which I don't have to tell you about, which is the Sacramento Siemens; another one is ongoing.

Mr. **Oberstar**. It's very interesting. You've cited cases in which UMTA has initiated an investigation, and just the fact of the investigation itself brought about an action—perhaps a desired result: that a noncompliant bidder pulled out.

Mr. **Gill**. That has happened, as I said, just recently, where we had one company that just refused to give us any information to show us how they complied. So, the transit authority called us and said we're going to throw out their bid, and we said fine, go ahead. That was the end of it.

Mr. **Oberstar**. Vigorous enforcement of the Buy America Act can—by this type of device of just inquiring into those cases—make that act real. We urge you to be vigorous. It is an effective deterrent.

I have a last series of points that I want to review with you on the new law.

Mr. DelliBovi, when do you anticipate the regulations—whether notice of proposed rulemaking or whatever the status is—to implement the 1987 act will be published?

Mr. **DelliBovi**. We finished our drafting of those regulations within UMTA, and they have now been forwarded on for review. They need to be reviewed by both the Secretary's office and the Office of Management and Budget.

I am optimistic that we will have that review completed by the late part of the summer.

Mr. **Oberstar**. It will take that long?

Mr. **DelliBovi**. Well, I am giving you my worst-case guess.

Mr. **Oberstar**. That is your worst guess—or best guess—as to when. The proposed rulemaking has been submitted simultaneously to both the Secretary's office and OMB?

Mr. **DelliBovi**. No. It goes sequentially.

Mr. **Oberstar**. Sequentially?

Mr. **DelliBovi**. It has to go first to the Secretary's office and then from the Secretary's office to the Office of Management and Budget.

Mr. **Oberstar**. When was it submitted to the Secretary's office, do you know?

Mr. **DelliBovi**. Within the last 24 hours. [Laughter.]

Mr. **Oberstar**. Just recently. I am sure Secretary Burnley would like to have this matter out of his hands. He has enough to do just to keep the FAA on track.

Mr. **DelliBovi**. There are a great many rulemakings in the department, and that is one of the problems. This will be in the queue with the others. Obviously, we have consulted with the staff in developing this rule. But when you consider the many modes in the department, there are a great many rules to review that are going through the process. Hence my hope, my optimistic view, that the late summer we will have the rule see daylight.

Mr. **Oberstar**. Perhaps you can give us a bit of a sneak preview of the NPRM. What would be the role of grantees in the matter of audits?

Mr. **Gill**. Mr. Chairman, that's a separate rulemaking. That is not addressed because the preaward and postdelivery audit encompasses more than just Buy America. So, that's a separate rulemaking.

Mr. OBERSTAR. A separate rulemaking?

Mr. GILL. Yes, sir.

Mr. OBERSTAR. Where does that one stand?

Mr. DELLIBOVI. I really don't know.

Mr. GILL. That one is being circulated within UMTA. We have drafted that one, and we are consulting now with our various UMTA offices both in Washington and the field offices to get their comments on how the draft would be implemented and whether we're on the right track with the new approach taken in that rule, that proposed rulemaking.

Mr. OBERSTAR. I ask because earlier today we had testimony from other witnesses about the importance of the preaward audits. What will be the role of UMTA in the preaward audits as envisioned—without getting into specifics because I realize that you don't want to be revealing all of this before your NPRM is published? But can you give us some idea?

Mr. DELLIBOVI. Well, frankly, we haven't fully decided. That will be one of the things that we will be requesting comments on when the notice goes out. I think it would be safe to say that we are leaning to having the responsibility rest with the grantees as it does for all procurement actions. But we want to make sure that there is an independent review provided. I believe that many of our grantees will accomplish that by contract with some outside auditor.

Mr. OBERSTAR. Would UMTA itself have the resources to conduct such audits or the resources to review such audits, the preaward audits?

Mr. DELLIBOVI. UMTA would not be in a position to conduct those kinds of audits itself. No. We review the grantee's performance every three years as a triennial review. It would be incorporated into that.

That role would be totally at variance with the role of a grant-in-aid agency for us to be reviewing that directly.

Mr. OBERSTAR. What about simply with respect to Buy America?

Mr. DELLIBOVI. Reviewing Buy America?

Mr. OBERSTAR. Yes. Would you have the resources? Do you anticipate having the resources?

Mr. DELLIBOVI. We handle Buy America now, and our resources are quite adequate. The single most important thing that we need with regard to Buy America is a vigilant domestic industry to alert us and to be watchful so that we know when there is a situation arising. As Mr. Gill indicated, we are very successful when we initiate investigations.

I have no way of knowing the cases where we have not initiated investigations and what the success rate would be, because we didn't initiate an investigation. It's just very difficult to figure that out.

We only act when we have a suspicion, and in most cases, quite honestly, the suspicions are brought to our attention by the marketplace and by the competing American producer.

Mr. OBERSTAR. Now, my understanding is that in the past UMTA has not used PMO's, the project management oversight contractors, to identify noncompliance with Buy America on major capital projects. Do you foresee a role for PMO's in the future in undertaking this responsibility?

Mr. DELLIBOVI. Well, with respect to the Seattle procurement, the tunnels, we have asked our PMO specifically to be concerned with that area.

The PMO's are our eyes and ears in the field, and we can give them specific areas of emphasis and concern, and when a problem with any aspect of the UMTA Act applies, we may call upon them to help us investigate and review it. They are an arm of UMTA, and a very effective one, and as I say, they are on the case in Seattle right now.

Mr. GILL. Mr. Chairman, also, the PMO's are usually on major construction projects and there are not the Buy America issues there. But once it gets to a stage of construction, Los Angeles being a good example, when they start installing the traction power system and the train control system, the PMO would then shift its emphasis and look at that. Whereas if somebody is repairing a facility or just building a tunnel, there are not that many issues about Buy America there, so they wouldn't have an emphasis on that.

Mr. OBERSTAR. Well, I think we heard earlier today from GAO that their understanding is that the PMO's do not have experience; maybe one in ten has experience with Buy America.

Mr. GILL. The conference that was mentioned that is going to be held next week, we are bringing in all of our PMO's. And one of the sessions is a discussion with them on what Buy America is. So, hopefully, after next Tuesday, ten PMO's will know how it works.

Mr. OBERSTAR. Very good. My compliments. I urge you to highlight Buy America. If they need additional encouragement and inspiration, we will be happy to come and help out.

Mr. DELLIBOVI. Well, Mr. Chairman, if you like, we will check with your staff. That might be indeed very nice to have you, if that would work out, to have you fit into that session because I think that would be effective, and we will certainly talk to your staff about possibly having you come and address that group.

Mr. OBERSTAR. I have done that type of thing with the FAA, not on Buy America but on other aspects, and I would be happy to come and do that if we could work that out.

We understand that in the future UMTA may not be retaining the stipulation that 10 percent of the contract cost be attributable to final assembly. Why not? Is that the case?

Mr. GILL. Again, in our proposed regulation we are seeking comment on that. The 10 percent—again, there is no final decision, obviously—the 10 percent is a presumption of compliance, it's not mandatory that you have to have 10 percent in order to have final assembly.

We used that test because we had been in some investigations seeing that rail car procurements, for example, the cost of final assembly runs about 12 percent. Buses just don't run that; final assembly is somewhere in the neighborhood of 6 to 8. On some other things on final assembly it's even less. It's not a true test of anything, and that's why we're seeking comments on it.

Mr. OBERSTAR. My final question: How will manufactured products be treated in the regulations to be issued under the new law?

Mr. Gill. In what regard, Mr. Chairman?

Mr. Oberstar. How will manufactured products——

Mr. Gill. Well, under the current regulations there are very broad requirements for manufactured products. Based on our experience, we are going to be proposing to tighten up those and be much more specific as to what is required in order for a manufactured product to be considered domestic.

Mr. Oberstar. And you are still designing that rulemaking; is that correct?

Mr. Gill. That's the rulemaking Mr. DelliBovi mentioned was sent to the office of the Secretary.

Mr. Oberstar. That is the one that is already in the Secretary's office?

Mr. Gill. Yes, sir.

Mr. Oberstar. We shall await the review by the Secretary's office and by the Office of Management and Budget. We urge them to move expeditiously, and we will continue to follow this matter in future hearings.

You have been most patient. We greatly appreciate your remaining with us throughout this long day, interrupted as it was by a series of votes and other activities.

I want to thank you for your participation and encourage this process now undertaken, of drawing more tightly those regulations, being more specific, making your PMO's more aware, bringing a greater level of awareness to regional offices, and doing better dissemination of information.

It seems to me that in testimony we have received from you this afternoon, UMTA is on track with the recommendations of GAO and the intent of Congress in tightening up the Buy America provisions as written in the 1987 act, and we want you to continue vigorously to carry out that law. Other people's jobs depend on it.

Thank you very much.

Mr. DelliBovi. Thank you, Mr. Chairman.

Mr. Gill. Thank you, Mr. Chairman.

[Mr. DelliBovi's prepared statement follows:]

STATEMENT OF ALFRED A. DELLIBOVI
ADMINISTRATOR
URBAN MASS TRANSPORTATION ADMINISTRATION
BEFORE THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES

MAY 12, 1988

Mr. Chairman, members of the Subcommittee, I am pleased to have this opportunity to appear before you to discuss the Urban Mass Transportation Administration's implementation and enforcement of the Buy America program. Appearing with me today is Edward J. Gill, Jr., UMTA's Deputy Chief Counsel and Theodore A. Munter, Assistant Chief Counsel for Programs Division.

PROGRAM IMPLEMENTATION

The Surface Transportation Assistance Act of 1978 included a Buy America provision applicable to the UMTA program. That provision was not an absolute prohibition against the procurement of foreign products, rather it established a preference for products mined, produced or manufactured in the United States, and applied to all contracts of UMTA grantees over $500,000. UMTA's implementing regulations for this provision required each bidder to provide a certificate with its bid indicating that it would comply with the requirements, or listing those items it would be supplying that would not comply. The regulation included the exact language of the required certificate. The regulation also provided that if UMTA initiated an investigation in response to a request for an investigation, the successful bidder had to document its compliance with the requirements. If UMTA determined that the bidder did not comply with the requirements, the bidder would be required to substitute sufficient domestic materials to meet the terms of the original certification.

The Surface Transportation Assistance Act of 1982 made significant changes to the Buy America requirements by eliminating the $500,000 threshold for applicability and setting up essentially two separate programs. One governed the procurement of steel and manufactured products, and the other governed the procurement of rolling stock and certain kinds of enumerated associated equipment such as traction power, train control, and communications equipment.

As a result of the statutory changes and UMTA's experience with its investigations, UMTA issued new Buy America regulations in 1983. These regulations again required bidder certification of compliance, but did not include exact language for the required certificate. In 1986, at the request of both grantees and suppliers, UMTA added to the regulations specific language for the required certificates.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 made further changes to the Buy America requirements. The principal change was to require that 50 percent of the cost of a component's subcomponents (for buses and other rolling stock) be of U.S. origin in order for the component itself to be considered to be of U.S. origin. In addition, the domestic content requirement for buses, rolling stock and associated equipment will be increased from 50 to 55 percent effective October 1, 1989, and to 60 percent effective October 1, 1991, except that any company that has met the existing Buy America requirement would be exempted from these increases for all contracts entered into before April 1, 1992. Finally, the rolling stock price differential waiver was increased from 10 percent to 25 percent. UMTA is currently preparing a notice of proposed rulemaking to revise its regulations to reflect these changes.

As you know, the Buy America requirements also apply to the Federal Highway Administration's grant program. Yet FHWA's application of the requirements differs from UMTA's because of the different nature of the two programs. A significant portion of UMTA's funds are used for manufactured products. This is not the case with FHWA. Because the amount of foreign manufactured products used by recipients of FHWA funds is virtually de minimis, FHWA concluded it was not necessary to impose the Buy America requirements on the procurement of manufactured products by its grantees.

PROGRAM ENFORCEMENT

Between 1982 and 1986, UMTA conducted a number of investigations of compliance with the Buy America requirements by its grantees. A major problem in those investigations was determining whether certain components were being manufactured in the United States. (The recent statutory inclusion of "subcomponent" should alleviate this in the future.)

Determining whether certain components were manufactured in the United States for purposes of compliance with the Buy America requirements was the key issue UMTA faced in the Sacramento/Siemens case. I know that the Subcommittee is familiar with that investigation, but I believe that it is useful to highlight some aspects of that investigation along with our ultimate findings.

In September of 1983, the Sacramento Regional Transit District entered into a Full Funding Agreement for construction of a light rail transit system. Siemens Energy and Automation, Inc. bid on and was awarded a contract to manufacture 26 light rail cars for the new system. At the time Siemens entered its bid it also signed a certification saying that the manufacture of the rail cars would comply with the Buy America requirements. It was later brought to UMTA's attention by its project management oversight contractor that Siemens was not in fact complying with the Buy America requirements. UMTA conducted an investigation and on March 3, 1986, issued a finding that Siemens was not in compliance with the Buy America requirements for the procurement of rolling stock because substantially less than the required 50 percent of the cost of the components of the rail cars was of domestic origin. At the time UMTA issued its finding, Siemens had completed work on 15 of the 26 rail cars. Both Sacramento and Siemens requested that UMTA reconsider its decision. After lengthy negotiations, UMTA, Sacramento, and Siemens entered into a settlement agreement. The purpose of the agreement was to allow the Sacramento light rail transit project to proceed, to establish for the record an admission by the investigated party that a violation of the Buy America statute and regulations had occurred, and to ratify a compliance plan for the 11 rail cars not yet manufactured.

The settlement agreement required the remaining 11 rail cars to be manufactured in compliance with the Buy America requirements, and expressly stated that the 15 rail cars already built were not manufactured in compliance with the Buy America requirements. However, it would not have been in the public interest to require Siemens to disassemble the 15 completed rail cars; the greater public interest was in the expeditious completion of the Sacramento light rail transit project.

UMTA's decision not to require disassembly of the 15 completed rail cars and insist on compliance with the Buy America requirements was an exercise of the agency's discretion. The practical effect of such an exercise is equivalent to a prosecutor's decision not to prosecute. It is important to emphasize that an agency's exercise of discretion differs, fundamentally, from a grant of a waiver. A waiver is an express excusal from compliance with the law that is granted prospectively. In this instance, UMTA (1) insisted on prospective compliance with the law, and (2) exercised its inherent powers regarding the choice of sanctions for noncompliance. It is my firm belief that with the agreement UMTA enforced the Buy America requirements. Moreover, the settlement agreement is now an important precedent in UMTA's enforcement of the Buy America program.

LESSONS LEARNED

The most important impact of the Siemens investigation and subsequent UMTA findings was to significantly raise the level of consciousness of manufacturers concerning compliance with Buy America requirements. Because of the vast differences in the products being supplied to UMTA grantees, and more importantly, the various manufacturing processes used by different manufacturers of the same product, UMTA has had an extremely difficult time crafting exact definitions and requirements in its regulations. The findings of the Siemens case brought this issue to light, and resulted in a number of rail car suppliers seeking guidance from UMTA concerning their manufacturing procedures before those procedures were implemented. In addition, UMTA was able to gain valuable experience which UMTA is taking into consideration in revising and clarifying the Buy America regulations.

During the course of the Sacremento/Siemens investigation and the subsequent enforcement of the settlement agreement, UMTA conducted a number of site visits to facilities being used by Siemens and its subcontractors. These visits emphasized the fact that desk audits of compliance with Buy America requirements are not always sufficient to determine if there is actual compliance. This hands-on experience also has given UMTA insights which it will use in revising the Buy America regulations.

Since the Siemens case, UMTA has made a conscious effort to ensure that its determinations are given wide dissemination, and that there are not conflicting interpretations of the regulations. UMTA uses its regional offices to ensure that its grantees are aware of the requirements and UMTA's interpretations and enforcement of them.

SANCTIONS

Under the existing statutory structure, the principal sanction for non-compliance with the Buy America requirements is the loss of Federal funds. I firmly believe that this is the correct sanction. The obligation to ensure that a supplier is complying with the Buy America requirements, along with all other Federal requirements, rests with the recipient of Federal funds. In this regard, a new requirement of the Surface Transportation and Uniform Relocation Assistance Act of 1987, should have a major impact in ensuring compliance with the Buy America requirements.

Specifically, section 319 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, directs the Secretary to issue regulations requiring pre-award and post-delivery audits of rolling stock purchases made with UMTA funds. One of the three required elements of the pre-award and post-delivery audits is a check for compliance with the Buy America requirements. (The other two required elements are federal motor vehicle safety requirements and the grantee's own bid specification requirements.) Section 319 specifically states that manufacturer certification of compliance with Buy America requirements will not be sufficient and that "independent inspections and auditing shall be required."

Since a supplier's compliance with the Buy America requirements must now be fully and independently documented prior to award of a contract, it is expected that the number of UMTA enforcement actions regarding rolling stock procurement will be reduced if not altogether eliminated. UMTA expects to serve in an advisory capacity if any questions regarding compliance arise during the pre-award audits. Once a contract is awarded, the post-delivery audit requirement will ensure that grantees insist their suppliers continue to comply with the Buy America requirements because a consequence of non-compliance with the Buy America requirements is the loss of Federal funds. The use of in-plant inspections during the manufacturing process is one option UMTA grantees will likely use to monitor compliance. In addition to the Buy America amendments, UMTA is preparing another notice of proposed rulemaking to implement this pre-award and post-delivery check on compliance with Buy America requirements.

ECONOMIC IMPACT

While UMTA has been unable to quantify the economic impact of the Buy America requirements, I believe that as a result of the Buy America requirements manufacturers of major items such as buses and rail cars have increased their utilization of American component suppliers. UMTA expects that the latest amendments to the Buy America statute will increase this usage of American suppliers further.

STATE BUY AMERICA LAWS

The Surface Transportation Assistance Act of 1982 specifically allows States to enact Buy America requirements that are more restrictive than the Federal requirements. To date, we have not encountered any difficulties with this provision. For example, Pennsylvania has a domestic steel products provision which was recently revised to provide that compliance with the Federal requirements would be presumed to be compliance with the State requirements for the procurement of rolling stock.

Mr. Chairman, this concludes my prepared remarks this morning, and we would be pleased to answer any questions you might have.

Mr. **Oberstar**. The subcommittee stands adjourned.

[Whereupon, at 5:45 p.m., the subcommittee was adjourned.]

BUY AMERICA

(U.S. Army Corps of Engineers)

TUESDAY, MAY 17, 1988

House of Representatives,
Subcommittee on Investigations and Oversight,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to recess, at 10:15 a.m., in room 2167, Rayburn House Office Building, Hon. James L. Oberstar (chairman of the subcommittee) presiding.

Mr. Oberstar. The Subcommittee on Investigations and Oversight will come to order.

Today's hearing on the U.S. Army Corps of Engineers' Buy America program is the third in our series of inquiries into implementation and enforcement of Buy America by key executive branch agencies which are charged with its stewardship. Last month we heard from the Federal Highway Administration, which is responsible for ensuring that domestic steel is used in our Nation's highway and bridge programs. We were impressed at that time with the positive economic impact that Buy America has had on the domestic economy in general and on the steel industry in particular, and the beneficial effect it has had on the retention of jobs in basic steel and steel-related industries.

Last week we had a different story. We heard from the Urban Mass Transportation Administration, which has a much more complicated law to administer and a more complicated set of implementing regulations, and a commensurately more difficult time ensuring that the letter and the spirit of Buy America are being fulfilled.

Domestic industries that supply components and subcomponents to Federal mass transit projects are faced with stiff competition from companies overseas who enjoy the advantage of heavy government subsidies from the host country, as well as the certainty of protected domestic markets. Foreign companies have too often penetrated American markets through loopholes and through lax enforcement of our own Buy America laws; and yet, at the same time, those companies enjoy the protection at home of laws that deny entry by U.S. competitors into their domestic market.

The 1987 Surface Transportation and Uniform Relocation Act strengthened the provisions of UMTA's Buy America program. We wrote those provisions specifically in response to concerns that this committee and the full committee have heard about the Buy America Act as it applies to mass transit, and this subcommittee has the specific responsibility to see that the laws are being carried out. We were encouraged to learn last week that the regulations that UMTA has proposed to implement that law, whenever they are going to be released—we hope that is going to be in a reasonably short time—will embody the stricter interpretations and stricter compliance monitoring that the law envisions for a more effective, and much stronger program which Congress intended.

Today's focus is on a specific action proposed by the Department of the Army, to weaken an important provision of the Corps of Engineers' long-standing Buy America program as it relates to direct supply contracts for civil works projects. The Army proposed a rule change in April of last year to eliminate the 50 percent evaluation factor applied against foreign bids from countries such as Japan and Korea, where we have large balance of payment deficits. The Army tried to explain that the rule change would reduce cost to the taxpayer, claiming that "the economic burden on an industry-wide basis is insignificant."

They also claimed that deleting Buy America would "eliminate confusion," claiming that "the different Buy America factors applied to procurement by civilian agencies has caused confusion in the industry and in the procuring agencies."

Well, what is insignificant to the Department of the Army may have a powerful impact on the domestic marketplace and may be devastating for individual industries, especially to those industries that have seen a tremendous erosion of their market share over the last 20 years. Interestingly, the Corps of Engineers recognized the adverse impact that the proposed rule change would have, and they stated that

> maintaining the 50 percent evaluation factor obviously will not protect U.S. industry from continuing deterioration. However, it is our opinion that deleting it will only encourage that deterioration in that it will cause plants to close; it will cause merging of plants, or the selling of U.S.-owned plants to foreign countries. It will increase the percentage of work that is subcontracted overseas, and it will give rise to joint agreements with overseas firms where the U.S. company is little more than a sales force for the foreign firm.

A very telling statement that was ignored, regrettably, by the Department of the Army, which went on to propose the rule change despite that good advice from the Corps of Engineers. It was only after intense intervention by Members of Congress and committees of Congress that the action has been stopped.

The Corps of Engineers estimates that some $90 million worth of direct procurement of equipment for civil works projects will take place over the next two to three years. Well, those are the very projects and procurements that would be affected by the proposed rule change.

An analysis prepared by the Congressional Research Service estimates that every dollar spent in the U.S. by the Corps of Engineers for water transportation and water resource development projects yields some $2.08 in direct and indirect domestic production. A $1 billion expenditure will generate some 43,000 jobs in the overall domestic economy.

It is inconceivable to this Member that the Department of the Army would propose a procurement revision that would send more

American dollars overseas to help reduce unemployment in foreign countries at the expense of jobs in the domestic economy, and especially an action that would adversely affect an already-devastated industry, steel, and one that is so important to the overall industrial base of the United States. I find it unbelievable.

The subcommittee is heartened to see that the Army ultimately saw fit to abandon this misguided course, but, we want to know how it happened, how it came about, and most importantly, we want to take steps so that this tragedy will not be repeated in the future.

We will hear today from witnesses speaking for those industries most affected by the Corps' direct purchase of civil works equipment. They will include representatives of the steel industry, the Steelworkers, and manufacturers of valves, pumps, gears, and turbines. Of course, we also will hear from the Department of the Army; they will tell us how this decision came about—not by accident, which could be forgiven, but by tortured logic or inaccurate information and muddled thinking.

The Chair recognizes the gentleman from Pennsylvania for opening remarks.

Mr. CLINGER. Thank you very much, Mr. Chairman. As you have indicated, this is the final installment in a set of three hearings on Buy America and its application to programs under the jurisdiction of the Committee on Public Works and Transportation. We previously reviewed the application of Buy America requirements to Federally-funded surface transportation projects administered by FHWA and UMTA. Today we will examine the Army Corps of Engineers' Buy America and Balance of Payments programs and their application to water resource projects.

As you have indicated, on April 16 of last year the Department of the Army published a proposed rule to eliminate the application of the 50 percent evaluation factor for purchases of equipment and supplies in support of the Corps' Civil Works program. This proposed rule raised much concern in Congress because of its potential impact on domestic industries that have been traditional and regular suppliers of products for Corps use on Federally-funded water projects.

In proposing the rule change, the Department indicated a desire to simplify procurement procedures, and to perhaps save money. The Department also estimated that the overall economic impact resulting from the proposed change would be "insignificant."

These rationales indicate to me both a lack of appreciation of the major impact that the rule change would have on small businesses and suppliers as well as the benefits that flow back to the Federal Government through payroll taxes, Social Security payments, and other such mechanisms.

I am pleased to join with the chairman in noting that in the interval since this hearing was originally scheduled, a decision has been made to withdraw the proposed rule, thus leaving the 50 percent evaluation factor in place. While such a decision would seem to obviate the need for this hearing, I think it should be noted that the withdrawal remains to be published in the Federal Register, and I think that we are all fully aware that a proposed rule change that is withdrawn today can be resurrected tomorrow. Hence, we need to assure that those involved who are here today have their say so that the record on this particular proposal is thorough and complete.

We will be hearing today from the steel industry and other suppliers to the Corps about the often-unfair competition they face from imports that are underpriced through subsidy by foreign governments, as well as about the detrimental effect which the rule change would have on their industries.

We will also hear from the Department of the Army and the Corps about their stewardship of the Buy America and Balance of Payments programs and the rationale behind the proposed change in the rule.

So I join you, Mr. Chairman, in welcoming our witnesses and look forward to hearing their testimony.

Mr. **Oberstar**. Thank you very much, Mr. Clinger.

Our first panel includes Mr. Robert J. Carle, Product Line Manager for Bethlehem Steel Corporation of Bethlehem, Pennsylvania, and Mr. Tim McNally, Recording Secretary of Steelworkers Local 2599, Bethlehem, Pennsylvania.

[Witnesses sworn.]

Mr. **Oberstar**. Welcome to the subcommittee hearing. Thank you for the time and trouble and effort you have invested in developing your testimony and contributing to our oversight and review of these actions by the Department of the Army and the Corps of Engineers. We look forward to your testimony.

TESTIMONY OF ROBERT J. CARLE, PRODUCT LINE MANAGER, BETHLEHEM STEEL CORP., BETHLEHEM, PA, ACCOMPANIED BY DAVID H. PHELPS, MANAGING DIRECTOR, TRADE AND INDUSTRY ECONOMICS, AMERICAN IRON & STEEL INSTITUTE; AND TIM McNALLY, RECORDING SECRETARY, LOCAL 2599, UNITED STEEL WORKERS OF AMERICA, BETHLEHEM, PA

Mr. **Carle**. Mr. Chairman, thank you for the opportunity of participating in this hearing.

As stated, my name is Robert Carle, and I am a Product Line Manager with Bethlehem Steel Corporation.

My comments are made on behalf of Bethlehem Steel Corporation and the domestic member companies of the American Iron and Steel Institute. Let me state at the outset that AISI domestic member companies are opposed to the Army's proposal to reduce the evaluation factor used in supply contract purchases by the U.S. Army Corps of Engineers. In addition, I wish to make it clear that our presentation is in no way intended as a criticism of the Corps of Engineers. We have the utmost respect for that organization; in fact, over the years the steel industry has enjoyed a most cooperative relationship with the Corps in the review of technical specifications, design procedures, and product design and development. This cooperation has been to the benefit of the engineering profession and to the citizens whose lives are affected by Corps activities; and, of course, to Bethlehem Steel Corporation and other domestic steel companies and their workers involved in the production of products for Corps of Engineers projects.

In response to two questions raised in your invitation to me to speak before the subcommittee, first, we believe that the Corps of Engineers is doing an excellent job in assuring compliance with Buy America rules; and second, notwithstanding statements in the DOD public file to the contrary, my company's experience is that there is no inconsistency or confusion, in the Corps of Engineers or in the private sector, as to which Buy America regulations apply to direct procurement by the Corps, or how to apply them. In other words, at the working levels in the Corps and in supplying companies the procurement system, which includes Buy America, is well understood and functioning well.

The steel industry supplies many steel products to the Corps of Engineers including, for example, a stainless wire product used for soil erosion control supplied to the Corps under direct procurement contracts. The steel industry also supplies to the Corps, through construction contractors, a myriad of construction-type steel products such as structurals, plates, tubes, H piles, etc. However, while the particular product that I am most familiar with is steel sheet piling—and I will focus my comments today on that product—the points I make here generally are relevant to all steel industry products and Buy America issues.

Sheet piling is a unique specialty product produced by Bethlehem Steel at its home plant in Bethlehem, Pennsylvania, and is an important product used on Corps of Engineers projects. When I began in this business, nearly 30 years ago, there were four domestic producers of the product. Today Bethlehem Steel is the only remaining producer of hot rolled steel sheet piling in the United States. This erosion of our country's capability to produce hot rolled sheet piling occurred for much the same reasons that we have lost the capability to produce other steel products, such as industrial fasteners: because our trade policies in general have allowed free access to our markets by foreign governments and producers who engage in unfair trade practices and by government-owned and government-subsidized foreign steel producers.

As a result, our Nation is now in a precarious position as regards sheet piling because this product is a strategic material used in the construction of ports and harbors and locks and dams. Many of these and other structures could not be built without steel sheet piling, which we believe makes Bethlehem's continuance in the sheet piling business important to the Corps. In turn, Corps of Engineers procurement of sheet piling is extremely important to Bethlehem Steel. In recent years we have shipped over 30 percent of our sheet piling production to Corps of Engineers projects.

In recognition of the importance of this product and the need to ensure a steady supply of this strategic material, historically the Corps of Engineers has specified domestic sheet piling for all its Civil Works projects, whether through direct purchase or through indirect purchase on construction projects.

Buy America provisions have a long history at the Corps. In 1962, long before the heavy influx of foreign sheet piling into this country, then-Defense Secretary McNamara ruled that all Corps purchases for Civil Works projects would be subject to a 50 percent evaluation factor in order to help the U.S. balance of payments.

Certainly, the concerns expressed by Secretary McNamara in 1962 on this subject are still relevant.

Over the years, the regulations for construction contracts have been modified to reduce the evaluation factor to 6 percent for indirect purchases through construction contracts and most recently, as we are all aware, the Department of the Army proposed to reduce the evaluation factor from 50 percent to 6 percent for direct purchases by the Corps of Engineers. Until recently, the Corps had interpreted its Buy America rules so that only domestic sheet piling was used on its projects; but with the change in the rules affecting construction contracts, we see foreign steel finding its way into Corps projects. For example, on the Gallipolis Locks project in Ohio, the Huntington District of the Corps has allowed 1,240 tons of foreign sheet piling to be used because it is for "temporary" use. However, it will be on the job for four or five years before it is removed. We disagree with the waiver of Buy America for temporary structures and, in addition, we believe that it is absurd to consider four or five years as a "temporary" use situation.

Production of that steel in the United States would provide over 7,000 man-hours of employment. And speaking of employment, steel sheet piling is a very important product to the continuing operation of the Bethlehem plant, which employs approximately 4,800 workers.

Representatives of Bethlehem Steel and the American Iron and Steel Institute have frequently testified before Congressional committees on our support of Buy America provisions. That support is based on simple tenets. First, well over $0.40 of every dollar spent by the Federal Government to procure domestically-produced products is returned to Federal, State, and local governments in the form of taxes. Second, American dollars should be used to employ Americans. Third, the American steel industry is a critical part of the Nation's defense industrial base, and DOD procurement practices should reflect that. And four, in many cases the products procured by DOD are either sensitive or—as in the case of sheet piling—critical to the national defense infrastructure. For any part of DOD to adopt procurement policies that look only to short-term cost savings and do not take into consideration the full economic impact and long-term consequences for important U.S. industries is both plain short-sighted and bad economics, and it is certainly bad policy as far as impact on our Nation's defense capability is concerned.

In summary, we respectfully request that the current 50 percent evaluation factor be retained in all direct purchases by the Corps of Engineers. Also—and more importantly for steel products used in construction projects, such as sheet piling—we request that the regulations be clarified to restore the 50 percent evaluation factor for steel materials furnished on any Corps of Engineers construction contracts.

Thank you.

Mr. OBERSTAR. Thank you very much, Mr. Carle. I greatly appreciate your historical perspective on the origin of the Buy America Act and the McNamara order back in 1953, that puts today's actions in a very helpful context. Our trade deficit in 1962 was substantially smaller—albeit the economy was smaller—but the deficit was an order of magnitude different as compared to today's. And yet, there was the foresight then to see the significance of the steel industry and of our inland water resources development for national security purposes. Some 26 years later that focus seems at least temporarily to have been lost or clouded over. You put that all in very good perspective, as well as your comments about the economics of buying foreign. It is bad economics, despite what the short-term bottom line may seem

I'll come back and have further questions later.

Mr. OBERSTAR. Mr. McNally?

Mr. McNALLY. I want to thank you for having me here today. My name is Tim McNally; I'm a third generation steelworker. I've been employed at Bethlehem Steel Corporation for 24 years at the Bethlehem Plant, Bethlehem, Pennsylvania.

I am the Recording Secretary of Local 2599, United Steelworkers of America, and the editor of our monthly newspaper, the Local 2599 "Informer."

I would like to share my viewpoints and explain to all of you here today how I got involved in some of the issues that face the workers at the Bethlehem Plant. With me, it started with a commitment that I made to myself while writing an article for the "Informer" which was entitled, "End of an Era." The article was about the history of the Alloy and Tool Steel Division of the Bethlehem Plant which produced the best tool steel in the world for over 75 years. The article was also about the shutdown of those mills.

As I stood there that day taking photos of the partially-razed mill, I remembered as a child how I would meet my father during the summer at the gate, which now had a sign on it saying it was closed. My father worked at that mill for 35 years. I remember also, standing there as a child, the businesses that were there—the men's stores, the restaurants, doctors' offices, other types of businesses which are no longer there because the mills aren't there. At that moment I realized how businesses open and how businesses close, but there's something incredible about the shutdown of a steel mill. An integrated mill is so huge, it so dominates the landscape and the lives of the people around it that it's not quite believable that it will no longer be operating.

The shutdown of a steel plant makes it hard for American steelworkers to exert some control over their lives and it robs us of a sense of security and self-esteem that is difficult to recover.

I have a few facts that I'd like to share with you at this time.

In March of 1988, employment stands at 4,800 at my plant, down from 6,700 in 1984.

Our division's annual payroll for 1987 was $129 million, down from $185 million in 1984.

Our plant made purchases of about $114 million in 1987 from about 1,500 suppliers, down from $142 million in 1984,

Despite these facts, the workers at the Bethlehem Plant donated approximately $370,000 to charities in 1987.

With facts like these, we all—individuals, the company, and the Congress—have the incentive to try and exert some control to stop the imports which are affecting the Bethlehem Plant marketplace by 40 percent in the wide flange structural market and 60 percent in the sheet piling area.

I identify with the industry in which I work, and I realize—like my fellow coworkers do—that we have a stake in the plant. That's why labor and management joined together as a "partners for progress" team for the common cause of America, to ensure jobs at the plant and keep pride in America. I'd like to just jump over to what Bob was saying, that with 1,240 tons of foreign steel that's used on a temporary use—personally, I think that with every ton of foreign steel that's used we're losing a piece of America. There's no reason for them to be using foreign steel.

The Department of the Army has issued a proposed regulation to reduce the present 50 percent Buy America preference for Corps of Engineers Civil Works project contracts and replace it with the 6 percent and 12 percent factor. The steelworkers, their families, and the community of Bethlehem, Pennsylvania greatly oppose this action which would seriously hurt employment at the plant. None of us want to or should have to revert to higher unemployment as a tradeoff for the imports of steel products that are readily available domestically.

In 1985, over 30 percent of Bethlehem Plant's production of sheet piling was shipped to Civil Works projects. The plant is the only hot rolled sheet piling producer remaining in the United States and represents 12 percent of the total plant work in 1986.

Workers at the plant sent 2,500 letters to Washington on November 18, 1987. We had a press conference over on the Senate side with Senator Heinz, Arlen Specter, Congressman Ritter was there, and Senator Metzenbaum, and the fellows at the plant sent letters expressing their concern about the Army Corps of Engineers trying to get out of the 50 percent. The basic principle that they believe in—and I talked to a lot of guys in the plant; I work in the shipping yard, so I'm there most of the time—they explained to me that they can't understand why their tax dollars—why can't they be spent on American-made steel rather than going to foreign-subsidized or foreign government-owned steel? They don't understand that the Army Corps of Engineers is doing this. In fact, I told some people about it and they looked at me and called me a liar. They said, "The Army Corps of Engineers wouldn't do that to us. The Department of the Army wouldn't do that. You can't get any more American than the United States Army."

The letters were received by a very supportive group that included Senator Heinz, Senator Specter, Congressman Ritter, and Senator Metzenbaum. Senator Specter echoed our feelings when he said, "It's just a matter of fundamental fairness that we ought to buy American when America is doing the buying."

I'd like to quote Senator Metzenbaum also. He said,

> The Steel Caucus which I lead stands firmly behind the proposition that the Corps of Engineers should be following the former Buy America practice in order to keep jobs in this country. To me, it's an absurdity that the United States Army Corps of Engineers would even think about buying steel overseas. We need these jobs in this country. The Bethlehem Steel employees who sent in these petitions, the management, the labor in Ohio, want jobs. We want them to have their jobs and I'm pleased that the Army Corps of Engineers has said that they would reconsider their position. Let it be known that if they don't reconsider their position, if they continue to move forward, this Senator will do that which he has done in the past, and

that is to go to the floor of the United States Senate with an amendment requesting the requirement of them to buy American steel.

In closing, we believe it is in the best interests of the United States Government to maintain in writing the 50 percent evaluation factor on Civil Works projects in order to ensure the continued viability of domestic production of such an important product as steel sheet piling, that is produced at the Bethlehem Plant. It is an important part of the national goal of full employment.

I would like everyone to know that the Steelworkers stand ready to meet the challenges of rebuilding America. We have the facilities, the skilled workforce, and the technical expertise at the Bethlehem Plant and nationwide. We petition your support to that purpose.

But if the individuals, the company, and the Congress don't try to exert some control to stop the imports which affect steel plants like the one at Bethlehem, Pennsylvania, through the United States, a lot more will be lost than a steel mill, and we'll all be the worse for it.

Thank you.

Mr. OBERSTAR. Thank you very much, Mr. McNally. Your words have described in what I can only call "graphic human terms" the personal worth of a job and the pain of unemployment.

You put it in language that the arcane economic theories and theorists never comprehend. This committee has heard lots of testimony from economic experts, slicing hairs to explain what happens when decisions of this kind are made, and we're going to hear some more of that later on. But you put it in human terms, what the consequences are when a plant shuts down.

You say that an integrated mill is so huge that it dominates the landscape. So does a taconite plant in my part of the country that provides the raw material from which you make steel. I was mentioning a moment ago to my colleague, Mr. Clinger, how a few years ago at the depth of the steel recession—or "depression," as we called it—in the Mesabi Iron Range, I was up in the Johnstown/Bethlehem area for an economic development conference and drove past a mile-long line of Bethlehem Steel, shut down. Behind those shut-down mills was a huge mountain of taconite ore from Minnesota. Taconite plants dominate the landscape, and even when they don't, the underground ore mines where my father worked for 26 years—you can't see them, but they're even bigger—dominate lives just as much.

My father was a steelworker. In fact, he was the first one to join the Steelworkers Union in the Iron Range in 1937. Like you, he was Recording Secretary of Steelworkers Local 1663 for 26 years. Like you, he was reelected over and over again. One year when everyone else lost, he was the only one reelected.

The memory of what happens when you have depression in steel is not lost on us on the natural resource side. There is a linkage. Bethlehem is that link between the Mesabi Range in northern Minnesota and Steel Valley in Pennsylvania, Ohio, and other lower lake ports and steel mills.

When you talk about the impact on industry, when you talk about the investment of American dollars in American steel, I understand what you're talking about. I had the good fortune after my graduation from college to win a scholarship to study in Europe, at the College of Europe in Breuge, Belgium. At the time of the formation of the Common Market in Europe, at the height of the rebuilding of the European coal and steel industry, I traveled to each of the major sites of coal mines, steel mills, and foundries to see what they did, how they rebuilt that industry, and how they kept it going. And they did it with massive government support, financial support to rebuild that industry, and protective devices to keep foreign steel out. They had their priorities right: protect German jobs, Belgian jobs, Luxembourger jobs, Dutch jobs, French jobs, in steel.

The French want to sell us rail cars, but they won't let a foot of American rail in France. We produce some of the finest for unit trains in the world, and the French won't let it in. They just simply don't let it in, that's all; no argument, no international trade commission to look and review, no arcane economic theories. Just "Stay out, thank you; we don't need you."

Somewhere along the line we need to learn a lesson, and I hope that the Army and the Corps of Engineers both have learned a lesson in this process.

The Department of the Army is going to tell this committee that last year the steel industry in the United States produced 90 million tons of steel. Mr. Carle, is that an accurate number?

Mr. Carle. Yes, sir.

Mr. Oberstar. Domestic production was 90 million tons? Domestic raw steel production?

Mr. Carle. That's raw steel, sir.

Mr. Oberstar. Raw steel.

They also go on to say that the proposed rulemaking would have had an insignificant effect upon domestic steel production. Now, that may be 90 million tons for 1987, but what was the last year prior to 1987 when you had 90 million tons of domestic raw steel production? Wasn't that about 1979?

Mr. Carle. I think that's—let me just check with David, if he has any concept.

About 1981, I think, sir.

Mr. Oberstar. About 1979 or 1981. We've had a deep trough. Just about the time the industry was building back up, the Department of the Army said, "Well, that's all right, you can do without this amount." And a little while ago we heard from folks who wanted to do away with Buy America on the highway program; now we found out that's 2 percent. Now, you take the percentage that we lose from the Corps of Engineers, the percentage that we'd lose from the highways, the percentage that we'd lose from the bridge program, and the percentage that we might lose if we dropped Buy America, and the Federal Aviation Agency—the airport construction program, and what we'd lose if we dropped Buy America steel in the sewage treatment plant construction grants program, and a few others, and pretty soon the bleeding becomes profuse. This "little bit here and little bit there" I liken to being nibbled to death by ducks. Eventually, the body can't handle it, and the steel industry can't handle it.

Mrs. Bentley. Would the gentleman yield?

Mr. Oberstar. I'd be happy to yield.

Mrs. **Bentley**. On the question, Mr. Chairman, that you asked about the 90 million tons, I'd like Mr. Carle to tell us how much of that amount was semi-finished steel, plate steel—we don't have the fine finished products in this country any more, I don't think.

Mr. **Carle**. Well, that is correct. With your normal reduction factor from raw steel to finished product, you're much further down in the 70 million ton range.

Dave, do you have any feel for finished product in 1987, not counting raw steel—not counting semi-finished?

Well, in 1987, 76.5 million tons included finished steel product and the semi-finished steel—the ingots, the blooms, and the slabs shipped by domestic member companies of the AISI.

Mrs. **Bentley**. Would we be able to make the variety of products would need for an emergency as compared to 10 years ago? As I understand it a lot of the necessary equipment has been sold and is gone because the domestic industry was beaten by imports.

Mr. **Carle**. Your observations are accurate. I believe we are the only industrial nation in the world that can't supply its own demand for steel any longer because we've had to rationalize and close our facilities. I believe that the Department of Defense today is having some problems finding quality industrial fasteners because we no longer have the base in this country to provide them.

Mrs. **Bentley**. That's right, because we let them all go overseas.

Thank you, Mr. Chairman, for yielding.

Mr. **Oberstar**. Yes. I'm glad you made that point. I had made a marginal note on Mr. Carle's testimony that the tonnage of finished and semi-finished steel products—as I read your testimony over last night, my recollection was that that tonnage—was in the 70 million to 75 million ton range, and that that would have an effect on the percentage that the Corps of Engineers ascribed to the effect of their proposed rulemaking.

Equally important to tonnage, perhaps more important, is market share and price, because that relates to profitability and ability to reinvest, modernize, expand, and continue operations. What has been the price history on sheet piling?

Mr. **Carle**. Mr. Chairman, as we sit here today, the price of steel sheet piling as produced by Bethlehem Steel is the same as it was in 1982. We have not increased the price; rather, we have decreased the cost through the sacrifices of people like Tim, sitting here on my right, and through reinvestment in equipment, to enable us to produce this product less expensively. So we have not increased the price in six years.

Mr. **Oberstar**. And what has been the price history on imported products?

Mr. **Carle**. That has been increasing slightly recently in response to the change in the dollar value, but it still reflects heavy subsidization because it has not moved up with that complete change in the dollar.

Mr. **Oberstar**. What are the principal foreign sources of steel sheet piling?

Mr. **Carle**. The four principal sources coming into this country are all European, if you add Great Britain to that terminology: Great Britain, France, Germany, and Luxembourg.

Mr. OBERSTAR. And doesn't France now have the world's largest steel company with the merger of the two—Usinor and Soligor Steel—into one national steel company? Now it is claimed to be the world's largest steel company, both built with government subsidy and 50 percent government ownership.

Mr. CARLE. And continuing to be subsidized.

Mr. OBERSTAR. Yes.

How can the Corps claim that sheet piling like that used in the Gallipolis Lock is temporary when it remains in place for five years?

Mr. CARLE. I don't understand the logic, sir, as to why they would do that, other than the fact that it is eventually removed.

Mr. OBERSTAR. Well, is there any practical significance between temporary and permanent steel?

Mr. CARLE. Not when it comes to production of material in the United States, no, sir.

Mr. OBERSTAR. Not when it comes to purchase of that steel?

Mr. CARLE. That's correct.

Mr. OBERSTAR. Why should there be an exception for something that is used temporarily, whatever that period of time may mean, as compared to that which is put in place permanently? I don't understand. Is there some logic or explanation that the temporary steel is the property of the contractor?

Mr. CARLE. Yes, sir.

Mr. OBERSTAR. And the Corps would argue that that which is in the contractor's control and ownership cannot be covered by Buy America? Have you ever heard any such explanations?

Mr. CARLE. Yes. It eventually returns back to the ownership of the contractor. I'm assuming that is the basis for their judgment.

Mr. CLINGER. Would the Chairman yield?

Mr. OBERSTAR. Yes, I'd be happy to yield.

Mr. CLINGER. I'm just wondering, is this a precedent-setting thing, the Gallipolis situation? Or have you run into this interpretation by DOD before?

Mr. CARLE. As far as I know, sir, it is a precedent-setting decision on the part of the Corps because Bethlehem has enjoyed furnishing the temporary steel for many other Corps of Engineers projects. This is the first time——

Mr. CLINGER. This is the first time that the Department has differentiated?

Mr. CARLE. There may have been some small tonnage that has not come to my attention, but this is the first of any major project.

Mr. CLINGER. In the past the Department has always considered that steel is steel is steel, that whatever it is used for, it would come under the Buy America provisions?

Mr. CARLE. Yes, sir.

Mr. OBERSTAR. Is this a matter of considerable concern, the "temporary" designation?

Mr. CARLE. Yes, sir. It is of considerable concern, and I think it should be of concern to the Corps for this reason, that the hot rolled steel used in the cellular cofferdam structures which are the temporary structures used to build locks and dams is only supplied in this country by Bethlehem Steel. We're down to the sole source on that particular item.

Mr. **Oberstar**. So there are other areas of the country and other projects where the word "temporary" would be used, implying that considerable amounts of Foreign steel will be used, which means—as you and Mr. McNally both pointed out so well in your testimony, lost jobs, lost domestic production, and lost benefit to our economy. Is this the kind of thing that you referred to in the last part of your testimony, that: "Regulations should be clarified to restore the 50 percent evaluation for steel materials furnished on Corps of Engineers construction contracts"?

Mr. **Carle**. Yes, sir.

Mr. **Oberstar**. Can you elaborate on that? In what specific ways should those regulations be clarified, drawn tighter?

Mr. **Carle**. Well, the Corps in its past history has interpreted that only domestic materials would be used on projects by contractors until just recently, when we came across the Gallipolis ruling by the Corps. It seems to me that the application of a 50 percent factor in clear, simple language in the procurement regulations would be extremely helpful, and it should also identify "temporary" as well as "permanent" to avoid confusion on those issues.

Mr. **Oberstar**. We will pursue those matters with the Corps.

The Chair at this point would recognize the gentleman from Pennsylvania, but if the gentleman would withhold, the Chair would first like to recognize the gentlewoman from Maryland.

Does the gentlewoman have a statement that you would like to insert?

Mrs. **Bentley**. Yes, I do, Mr. Chairman.

Mr. **Oberstar**. Fine. We will include that by unanimous consent.

[Mrs. Bentley's prepared statement follows:]

PREPARED STATEMENT OF REPRESENTATIVE HELEN DELICH BENTLEY

Chairman Oberstar and Ranking Minority Mr. Clinger, I commend your leadership in continuing to hold Congressional oversight hearings to review the application of "Buy America" provisions. Today's hearing will focus on "Buy America" provisions for the Army Corps of Engineers projects. Our weakening industrial base needs a strong "Buy America" law. The 50% evaluation factor for the Army Corps of Engineers purchases should not only be maintained but even strengthened. Any move to reduce this rule or eliminate it is a move in the wrong direction.

I am a strong advocate of maintaining, strengthening and even extending "Buy America" provisions throughout all our federal agencies. Proposals that are designed to reduce or eliminate "Buy America" provisions under any condition are not in the best interests of the United States. The U.S. tax base is a result of money spent in this country and we need to promote and defend our domestic industries when using taxpayers' dollars for government purchases.

Last year the U.S. Department of Defense (DoD) published a proposed rule to eliminate application of the 50% evaluation factor to any Corps' equipment or supply purchase in support of the Corps' civil works program. Application of DoD's proposal to reduce the 50% evaluation factor to 6% and in some cases 12% would only contribute to America's eroding industrial base. This proposed policy change would be a significant achievement for our foreign competition and would place our domestic industries at a significant disadvantage.

Congress has once again begun to debate the trade imbalance and high foreign trade deficit. Consideration of an Omnibus Trade bill has drawn our attention to the problems of foreign imports. House and Senate passage of the Trade bill is a clear indication of how most Members of Congress stand on the position of legislation designed to give domestic industries preference in federal purchases for government use. Congress has voted to promote American industry and not in favor of foreign competition.

It is encouraging to see included in the witness list for today's hearing are individuals who work in the steel industry and private industry. These witnesses will present their opinion of the importance that "Buy America" provisions have in maintaining a competitive balance against highly subsidized foreign competition. I look forward in receiving the testimony presented here today from both the private sector and the Army Corps of Engineers.

I offer my full cooperation and attention to reviewing preference for domestic items of federally funded projects. It is my hope that today's hearing will be helpful to all involved in writing "Buy America" provisions, making rule change proposals and enforcing application of domestic preference laws by our federal agencies. I thank the leadership of the subcommittee for their contiued support in this important matter.

Mr. OBERSTAR. Does the gentleman from New York have opening remarks?

Mr. TOWNS. No statement, Mr. Chairman.

Mr. OBERSTAR. Thank you.

The gentleman from Pennsylvania?

Mr. CLINGER. Thank you very much, Mr. Chairman.

I too, have had some personal connection with this whole issue because, representing a steel company that has been involved in the defense contracting business. It has struck me that there has been a major effort on the part of DOD to figure out ways to avoid Buy America; that Buy America is viewed as an impediment since every effort is made to find ways to circumvent it or to erode it in some way or another. And the result, very simply, as you have indicated here, is that we are seeing an erosion of our industrial base in a whole range of areas, whether it's in the defense contracting area or in the area of the Corps of Engineers. We have seen a rather alarming erosion of that industrial base to the point where, as you have indicated, you are now the sole domestic supplier of sheet piling.

The company I represent is just about the last surviving producer of crankshafts and shafts for naval vessels and so forth. So I think it is of major concern that we are seeing this gradual diminution of our industrial base, putting ourselves more and more in a position where we are totally dependent on foreign suppliers. When we do become totally dependent, are we going to be getting the price breaks and the subsidized low prices that we have gotten in the past? I think not. I can see that at that point we would be paying significantly more for the same products

Mr. Carle, your testimony mentions that through construction contracts, the industry supplies a whole array of steel products to the Corps. Does the industry also indirectly supply steel products, that is supply products to other suppliers who sell their products directly to the Corps?

Mr. CARLE. Yes, sir. The steel industry would supply the base material to firms that would manufacture, for example, steel gates for lock and dam structures, both the lock gates and the dam container gates. The machinery that operates that equipment would also be produced of steel, and I believe you will be hearing later today from some of those manufacturers of that equipment.

Mr. CLINGER. So what would be the effect upon the industry if those direct suppliers lost contracts because of the lower evaluation factor?

Mr. CARLE. I'm sorry, sir. Would you repeat the question?

Mr. **Clinger**. If you do supply to them, and if they were to lose contracts because of the lower evaluation factor, presumably we would also see them greatly diminished or out of business?

Mr. **Carle**. That is correct, and it would further erode the steel suppliers, as well.

Mr. **Clinger**. To what extent, if any, is the domestic steel industry able to sell to foreign suppliers or construction contractors? We've had some classic examples recently—with Japan, for example—where we've been excluded from even bidding or having any participation in public works projects in that country. What has been your experience in attempting to compete in foreign markets?

Mr. **Carle**. I have not had direct experience, but if I may, may I refer to Dave Phelps from AISI to respond?

Mr. **Clinger**. Yes.

[Mr. Phelps was sworn.]

Mr. **Phelps**. We at the AISI had one experience in the DOD procurement where the issue of MOU's and the reciprocity allegedly contained therein was raised. An MOU is a Memorandum of Understanding principally between the U.S. and our NATO allies, but also France.

The case in point involved Lukens Steel, and I can give you a report from Lukens directly, but I'll outline the basic facts of the case now.

Lukens lost a small percentage of tonnage on an armor plate procurement by DOD a couple of years ago to French and Belgian suppliers under the MOU provisions. In other words, there were no Buy America preferences applied against the Belgians or the French. Again, it was a small percentage of a fairly large procurement, but Lukens attempted to find out, A, how the process resulted in this foreign product coming in, and B, how they could stop it.

They found out that the MOU's provided this special treatment for the NATO allies, so they couldn't stop the process. But they also learned of the reciprocity provision in the MOU. And armed with the treaty—I suppose that an MOU is a treaty of sorts—they went through the motions for quite a few months, trying to become qualified as a supplier of armor plate to the French. They had a fairly good record of contacting the proper people in the U.S. Government and in the French government, and all of it was to no avail.

They took this record over to the DOD and apparently got a commitment that no more foreign armor plate would be procured. Whether that has actually been followed through on, I'm not aware. I can have a Lukens representative give you a full report.

Mr. **Clinger**. What you're saying is that having gone through the process and been denied the opportunity to become a qualified bidder to supply armor plate to Belgium or France or both——

Mr. **Phelps**. Specifically France, I think.

Mr. **Clinger** [continuing.] To France, then they were able to use that to convince DOD that it should be reciprocal? That is, that the foreign supplier should not be excluded?

Mr. **Phelps**. Yes. It wasn't their own argument, however. It took some help from the Hill, a little arm-twisting.

Mr. **Clinger**. So the co-production, in your view, has been somewhat of a one-way street?

Mr. PHELPS. I don't think there's any question about it. The MOU's, I think, were originally designed to facilitate the interchangeability of defense equipment.

Mr. CLINGER. Right.

Mr. PHELPS. And how in the world defense equipment finally got defined as things such as sheet piling and armor plate is kind of a mystery to everybody on the steel industry, because we don't really see that our products are lethal unless you happen to be under one of them when it falls.

Mr. CLINGER. Mr. McNally, in your testimony you mentioned that labor and management at Bethlehem have joined together to form a group which I think you called "Partners for Progress" to promote the steel industry. Could you give us some idea what kind of activities the group is engaged in and how you are going about promoting the steel industry?

Mr. MCNALLY. The idea actually came from the union side. We talked to the company about it, and letters were written to Len Williams, International President of the USWA, United Steelworkers of America, and Walter Williams, Chairman of Bethlehem Steel, stating our concern for the 40 percent structural—which is one of our primary products at the Bethlehem Plant—and about infrastructure and about how the Bethlehem steelworkers in Bethlehem, Pennsylvania, would like to help rebuild America.

They gave us their total support and told us that if there was anything they could do, they were behind us. What happened then was, we went into the plant—actually, we found out about this Army Corps of Engineers 50 percent preference. We only had 10 days to get the letters down here, and we wrote letters for the members to sign, hourly and union workers, and also pensioners from Bethlehem with the United Steelworkers of America. About 400 of them signed, too. So they brought down 2,500 letters. We only had 10 days, like I said; we probably could have brought a lot more. We could have brought 10,000 or 15,000 or 20,000 letters, you know. But the thing was that we only had a limited amount of time.

We did bring these letters down. We did present them on November 18th at the Dirksen Building to Senator Heinz, Senator Specter, Congressman Ritter, and Senator Metzenbaum. We presented the letters to them. And in fact, in our local paper—I'm the editor of our union paper—we did a nice article on it. I brought a couple extra papers if you want a copy.

That's how we more or less got involved in this issue. And now we're waiting for a trade bill to come down that the United Steelworkers of America and Bethlehem Steel agree on, and we're going to go from there.

Well, we got locked up with Leonard Williams and Kenny Kovack. I called Kenny from our side, and Jim Bradley, who is behind me, he called Leonard. He talked to Leonard, I talked to Kenny, and we worked it out how we could get together and how we could make a difference in our area, how I could exert some control over my life.

I like what's happening here today. I just wish there were more individuals and there was more company and union to come down here to the Congress to petition you people. And I'd like to thank you for having us down here to listen to what we have to say.

Mr. CLINGER. Well, we thank you for coming down and for testifying before us. It gives me a sense of real optimism that we're seeing this kind of cooperative effort between management and labor because we recognize that we've got a common enemy to deal with.

[The following was received from Mr. Carle:]

PARTNERS FOR PROGRESS

BETHLEHEM STEEL CORPORATION
BETHLEHEM PLANT
BETHLEHEM, PA 18016

June 1, 1988

Congressman William F. Clinger, Jr.
Ranking Republican Member
Subcommittee on Investigations and Oversight
Committee on Public Works and Transportation
U.S. House of Representatives
1122 Longworth House Office Building
Washington, D.C. 20515-3823

Dear Mr. Clinger:

During our visit with you and the Subcommittee on Investigations and Oversight on May 17, 1988, you indicated a desire to know additional details about our labor-management participation effort called Partners for Progress.

We've attached a fact sheet that should give you an idea of what we're all about and the way we operate. We have been involved with Partners for Progress since 1985, and both labor and management realize that our joint efforts are one of the key pieces to the long-term success of our plant.

We have also forwarded a copy of this letter and fact sheet to Mr. Oberstar and Mr. Italiano, Editor, Committee on Public Works and Transportation.

Thank you for your interest in our Partners for Progress effort.

Sincerely,

Vince Zoppi
Vince Zoppi
Union Coordinator

Jim Bradney
Jim Bradney
Management Coordinator

Attachment

cc: J. L. Oberstar
J. A. Italiano

PARTNERS FOR PROGRESS FACT SHEET

o The Partners for Progress effort was initiated at the Bethlehem Plant in the summer of 1985. The effort comes under the provisions of Appendix 15, covering Labor Management Participation Teams (LMPT), in the current labor agreement between Bethlehem and the United Steelworkers of America.

o Since its beginning, more than 2,000 plant employees have been through the effort's one-week "team training" course.

o At any given time, from 40-50 teams are involved in various projects within the plant, meeting on an average of twice a month, depending on the scope of the project at hand.

o Teams within a specific department are assigned to that department's Support Group, made up of union and management representatives who provide guidance and support for the teams and their respective projects by creating an atmosphere within the department where commitment for the effort is established and supported.

o At this time there are 24 department support groups, representing approximately 3,000 plant employees, or about 64 percent of the total plant workforce.

o The overall effort is guided by a steering committee made up of the following: Emilio "Chico" Curzi, President - Local 2599, USWA; Pete DePietro, President - Local 2600; Joe Yohn, President - Office & Technical

Workers Local; Andy Slabikosky, Department Manager - Primary Operations; Gus Moffitt, Manager - Human Resources; Gary Ward, President - Local 2598; Ron Saukko, Vice President - Operations, BethForge; and Andy Futchko, Manager- Bethlehem Plant Operations.

o There are no set locations for team meetings. Meeting places vary depending on the type of project or problem to be worked on by a team. Often meetings are held on-site within a department.

o While not every department within the plant is involved in the effort to-date, the future establishment of teams will be dictated by need and individual or group initiative.

o Since the effort's inception, the contributions to the plant in terms of increased efficiencies, improved safety, reduced waste and new ideas and suggestions have been incalculable.

o These successes are not generally determined in short-term dollar impact because often a team's accomplishment can only be valued in such longer term measures as safety, employee morale and communications, customer service, quality, and in the economy of operations, all of which contribute to improvements in plant competitiveness.

o Partners for Progress is the broad umbrella under which many employee involvement activities are taking place. Its main thrust is to get people thinking about how they can contribute in individual and group terms, in improvements to their quality of work life, and to the solution of cost, quality, safety and service problems and, therefore, to the bottom line of the Bethlehem Plant operations.

o Included in the plant Partners effort is an additional tool for the problem-solving effort -- Statistical Process Control (SPC). SPC uses simple statistical procedures to monitor processes and identify differences from normal operations so that the process can be controlled for improved quality, productivity, customer service, and lower costs.

o The Bethlehem Plant effort enjoys enthusiastic support from both union and management and, in addition, has been endorsed by the corporation's and the international union's top executives.

Mr. McNally. Could I just say one other thing?

Mr. Clinger. Sure.

Mr. McNally. I was over at the union hall two weeks ago, and Governor Dukakis came up to the Pennsylvania primary. His legal aide called the union hall, and I happened to be there, and they said, "Tim, one of Governor Dukakis' aides would like to talk to you." His first question was that he saw on the wire press when we were down here on November 18th, and he wanted to know if this is true, that labor and management were working together, and what are the likes and dislikes of the steelworkers in Bethlehem, Pennsylvania. And I did mention about the sheet piling; I mentioned about the 40 percent; and I mentioned about the "Partners for Progress" delegation that came to Washington and the press conference, and I told him about coming down here and appearing in front of Congressman Oberstar.

I said, "No, it's not a fake. The company is not coming out and saying, 'Hey, we've got labor and management, and we're really working together.'" I think this is a thing that just came from the grass roots level and just worked its way up here to Washington, D.C.

Mr. Clinger. Thank you, Mr. McNally. Thank you, Mr. Carle.

Mr. Towns [acting chairman]. Thank you very much.

The gentlewoman from Maryland?

Mrs. Bentley. Thank you, Mr. Chairman.

Mr. McNally, I was interested in some of the facts that you had in your statement. The Sparrows Point steel plant is in my district, so I am very familiar with the effects of declining employment and the attendant reductions in payroll and product quantity.

But I was also interested in what you said here about the amount that the workers at your plant had donated to charity. Last Christmas, my shipyard—I call it "my shipyard," the Sparrows Point shipyard where work has been reduced, even at that, for Santa Claus, Anonymous the workers came up with $10,000 for Christmas for the needy.

I think this is one of the things that the Army Corps of Engineers and others in this country are overlooking when they are looking at the so-called bottom price. One of the things that I've been harping on is, A, are the foreign steel producers going to pay taxes to this Government to keep the Corps in operation, for instance? And are those workers going to make contributions to charitable events to help the needy in this country?

These are just some of the human factors that Mr. Oberstar was referring to that we need to keep noting and emphasizing.

Mr. Carle, you pointed out how much the company has tried to cut down on overhead in order to be competitive. How much extra investment in plant equipment—let's say at any one of your plants, Sparrows Point, Bethlehem, or Burn's Harbor—has been necessary just to keep up with the laws and requirements of the Congress, be it clean air, clean water, be it whatever, vis-a-vis what a foreign steel producer might have to invest?

Mr. Carle. I'm not sure of the accurate numbers to address your question specifically. In the last five years we have reinvested approximately $2 billion in plant and equipment just to maintain where we are today, at a lower level than we were five years ago.

May I ask Dave a question?

Do you have any idea on an industry basis, Dave, what percentage or what value of dollars are invested for pollution control?

Mr. **Phelps**. I don't know.

Mr. **Carle**. I don't have an answer to your question, but we can certainly find out for you.

Mrs. **Bentley**. I'd like to know, because I think one of the facts that we're overlooking in this country is that we've been criticizing our so-called "smokestack industries," that they haven't modernized or kept up with competitors. The differences that have been mandated by our body and the State bodies just to keep up with those requirements—do they have that much more to invest in order to move ahead of the industry in techniques? That's one of the things that has bothered me. If you could supply some information along that line, I'd like to have it.

Mr. **Carle**. Certainly, we can get that for you, and we will do it.

Mrs. **Bentley**. Okay.

[The following was received from Mr. Carle:]

Bethlehem
SHAPE AND RAIL PRODUCTS DIVISION

BETHLEHEM STEEL CORPORATION
BETHLEHEM, PA 18016

May 31, 1988

Congresswoman Helen Delich Bentley
U.S. House of Representatives
1610 Longworth House Office Building
Washington, DC 20515-2002

Dear Mrs. Bentley:

Subject: Subcommittee on Investigations and Oversight
Committee on Public Works and Transporation
Buy-America Hearing
U.S. Army Corps of Engineers
May 17, 1988

During the above hearing, you asked a question concerning the amount of investment in plant and equipment required by a steel plant just to conform to the various environmental and other regulations imposed by Congress and by State bodies. The following information outlines the cost of such plant and equipment:

> Since the 1960's, Bethlehem Steel has invested over $835 million in plant and equipment for environmental programs including air quality, water quality and solid waste disposal. In addition, the operation of those programs costs over $100 million annually.
>
> At our Sparrows Point Plant, in which you have a specific interest, we have invested over $200 million and spend over $40 million annually to operate the programs.

We trust that this information will be helpful to you in quantifying the costs of environmental programs at Bethlehem Steel.

Very truly yours,

BETHLEHEM STEEL CORPORATION

Robert Carle
Robert J. Carle
Product Line Manager

RJC:jkr

cc: Congressman James L. Oberstar
Chairman, Subcommittee on Investigations and Oversight
Committee on Public Works & Transportation
U.S. House of Representatives
2351 Rayburn House Office Building
Washington, D.C. 20515-2308

Bethlehem
SHAPE AND RAIL PRODUCTS DIVISION

BETHLEHEM STEEL CORPORATION
BETHLEHEM, PA 18016

May 31, 1988

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Robert Carle

Robert J. Carle
Product Line Manager

RJC:jkr

cc: See attached

cc: Congresswoman Helen Delich Bentley
U.S. House of Representatives
1610 Longworth House Office Building
Washington, D.C. 20515-2002

Congressman William F. Clinger, Jr.
Ranking Republican Member
Subcommittee on Investigations and Oversight
Committee on Public Works & Transportation
U.S. House of Representatives
1122 Longworth House Office Building
Washington, DC 20515-3823

✓ Mr. Joseph A. Italiano, Editor
Committee on Public Works & Transportation
Room 2165 Rayburn House Office Building
Washington, DC 20515

Mrs. **Bentley**. I'm going to ask the Army Corps of Engineers when they come up—not only are they going away from the 50 percent Buy America, but they've also been dragging their feet about using American-flag ships on purchases that they've been making overseas. We want some information on that, too.

I want to join in the commendation of Mr. Clinger and the Chairman for the two of you getting together. This is what we do need. We are in an international battle.

The one thing that I want to point out to you, Mr. McNally, that I am bothered about as we are competing internationally today, is that let's not stick so many things in bills. I'm talking about issues that labor groups want—and I've been very supportive of labor on the whole, but I'm also looking at the international competitive field—and shoving things into bills, and they get passed when they would not pass on their own merit. This will make us even less competitive and it will make it difficult for us to be competitive. We have to look at that overall picture on this.

Thank you, Mr. Chairman.

Mr. **Towns**. Thank you very much.

Let me just ask a couple of questions here.

To your knowledge, have you been able to bid on public works projects in other countries?

Mr. **Carle**. In my particular product area we have not specifically pursued that because we were told by our representatives and agents who work on the export market that the countries who supply steel sheet piling to our country have closed doors on their public works projects.

But to directly answer your question, I do not have any specific, direct knowledge of that refusal to let us in. It has been through other contacts who have said, "You're just wasting your time; don't bother with it."

Mr. **Towns**. Thank you very much.

[The prepared statements of Messrs. Carle and McNally follow:]

TESTIMONY OF

ROBERT J. CARLE
PRODUCT LINE MANAGER
BETHLEHEM STEEL CORPORATION

ON BEHALF OF
BETHLEHEM STEEL CORPORATION
AND
AMERICAN IRON AND STEEL INSTITUTE

TO

THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES

MAY 17, 1988

Thank you for the opportunity of participating in this hearing. My name is Robert J. Carle, and I am a Product Line Manager with Bethlehem Steel Corporation.

My comments are made on behalf of Bethlehem Steel Corporation and the domestic member companies of the American Iron and Steel Institute. Let me state at the outset that AISI domestic member companies are opposed to the Army's proposal to reduce the evaluation factor used in supply contract purchases by the U.S. Army Corps of Engineers. In addition, I wish to make it clear that our presentation is in no way intended as criticism of the Corps of Engineers. We have the utmost respect for that organization. In fact, over the years, the steel industry has enjoyed a most cooperative relationship with the Corps in the review of technical specifications, design procedures, and product design and development. This cooperation has been to the benefit of the engineering profession and to the citizens whose lives are affected by Corps activities -- and of course to Bethlehem Steel Corporation and other domestic steel companies and their workers involved in the production of products for Corps of Engineer projects.

In response to two questions raised in your invitation to me to speak before the Subcommittee: (1) We believe that the Corps of Engineers is doing an excellent job in assuring compliance with Buy American rules; (2) Notwithstanding statements in the DOD public file to the contrary, my company's experience is that there is no inconsistency or confusion, in the Corps of Engineers or in the private sector, as to which Buy American regulations apply to direct procurement by the Corps, or how to apply them. In other words, at the working levels in the Corps and in supplying companies, the procurement system -- which includes Buy American -- is well understood and functioning well.

The steel industry supplies many steel products to the Corps of Engineers including, for example, a stainless wire product used for soil erosion control supplied to the Corps under direct procurement contracts. The steel industry also supplies to the Corps, through construction contractors, a myriad of construction-type steel products such as structurals, plates, tubes, H piles, etc. However, while the particular product that I am most familiar with is steel sheet piling and I will focus my comments today on that product, the points I make here are relevant to all steel industry products and Buy American issues.

Piling is a unique specialty product produced by Bethlehem Steel at its home plant in Bethlehem, Pennsylvania, and is an important product used on Corps of Engineers' projects. When I began in this business, nearly 30 years ago, there were four domestic producers of the product. Today Bethlehem Steel is the only remaining producer of Hot Rolled Sheet Piling in the United States. This erosion of our country's capability to produce Hot Rolled Sheet Piling occurred for much the same reasons that we have lost the capability to produce other steel products such as industrial fasteners-- because our trade policies in general have allowed free access to our markets by foreign producers who engage in unfair trade practices and by government-owned and government-subsidized foreign steel producers.

As a result, for our nation we are now in a precarious position as regards sheet piling, because this product is a strategic material used in the construction of ports and harbors and locks and dams. Many of these and other structures could not be built without steel sheet piling making Bethlehem's continuance in the sheet piling business important, we believe, to the Corps. In turn, Corps of Engineers' procurement of sheet piling is extremely important to Bethlehem Steel. In recent years, we have shipped over 30% of our sheet piling production to Corps of Engineers projects.

In recognition of the importance of this product and the need to insure a steady supply of this strategic material, historically the Corps of Engineers has specified domestic sheet piling for all its civil works projects, whether through direct purchase or through indirect purchase on construction contracts.

Buy American provisions have a long history at the Corps. In 1962, long before the heavy influx of foreign sheet piling into this country, then-Defense Secretary NcNamara ruled that all Corps purchases for civil works projects would be subject to a 50% evaluation factor in order to help the U.S. balance of payments. Certainly the concerns expressed by Secretary McNamara in 1962 on this subject are still relevant.

Over the years, the regulations for construction contracts have been modified to reduce the evaluation factor to 6% for indirect purchases through construction contracts and, most recently, as we are all aware, the Department of the Army proposed to reduce the evaluation factor from 50% to 6% for direct purchases by the Corps of Engineers. As a result of the Corps Buy American Rules, until recently the Corps has interpreted the regulations so that only domestic sheet piling was used on its projects. Whereas, recently, with the change in the rules affecting construction contracts, we see foreign steel finding its way into Corps projects.

For example, on the Gallipolis Locks project in Ohio, the Huntington District of the Corps has allowed 1,240 tons of foreign sheet piling to be used because it is for "temporary" use. However, it will be on the job for four or five years before it is removed. We disagree with the waiver of Buy American for temporary structures and, in addition, we believe that it is absurd to consider four or five years a "temporary" use situation.

Production of that steel in the United States would provide over 7,000 man-hours of employment. And speaking of employment, steel sheet piling is a very important product to the continuing operation of the Bethlehem plant, which employs approximately 4,800 workers.

Representatives of Bethlehem Steel and the American Iron and Steel Institute have frequently testified before Congressional Committees on our support for Buy American provisions. That support is based on simple tenets: (1) well over 40¢ of every dollar spent by the Federal government to procure domestically produced products is returned to federal, state and local governments in the form of taxes; (2) American tax dollars should be used to employ Americans; (3) the American steel industry is a critical part of the nation's defense industrial base, and DOD procurement practices should reflect that; and (4) in many cases the products procured by DOD are either sensitive or, as in the case of piling, critical to the national defense/infrastructure. For any part of DOD to adopt procurement policies that look only to short term cost savings and do not take into consideration the full economic impact and long term consequences for important U.S. industries is both plain short-sighted and bad economics -- and is certainly bad policy as far as the impact on our nation's defense capability.

In summary, we respectfully request that the current 50% evaluation factor be retained in all direct purchases by the Corps of Engineers. Also -- nd more importantly for steel products used in construction projects, such as sheet piling -- we request that the regulations be clarified to restore the 50% evaluation factor for steel materials furnished on any Corps of Engineers' construction contracts.

Thank you.

TESTIMONY OF

TIMOTHY McNALLY
RECORDING SECRETARY
LOCAL 2599 UNITED STEELWORKERS OF AMERICA
AT BETHLEHEM STEEL CORPORATION

ON BEHALF OF
LOCAL 2599 UNITED STEELWORKERS OF AMERICA

TO

THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
U. S. HOUSE OF REPRESENTATIVES

MAY 17, 1988

My name is Tim McNally. I am a third generation steelworker and have been employed by Bethlehem Steel Corporation for 24 years at the Bethlehem Plant, Bethlehem, PA.

I am the Recording Secretary of Local 2599 United Steelworkers of America (USWA) and the Editor of our tri-monthly newspaper, the Local 2599 "Informer."

I would like to share my viewpoints and explain to all of you here today how I got involved in some of the issues that face the workers at the Bethlehem Plant.

With me, it started with a commitment that I made to myself while writing an article for the "Informer" which was entitled "End of Era." The article was about the history of the Alloy and Tool Steel Division of the Bethlehem Plant, which produced the best tool steel in the world for over 75 years. The article also was about the shutdown of those mills.

As I stood there taking photos of the partially razed mill, I remembered as a child how I would meet my father during the summer/at the gate -- which now had a sign on it saying "Closed." My father worked at that mill for 35 years.

At that moment, I realized how businesses open and how businesses close, but there is something incredible about the shutdown of a steel mill. An integrated mill is so huge, it so dominates the landscape and the lives of the people around that it is not quite believable that it will no longer be operating.

The shutdown of a steel plant makes it hard for American steelworkers to exert some control over their lives and it robs us of a sense of security and self-esteem that is difficult to recover.

I have just a few facts that I'd like to share with you at this time.

- In March 1988, employment stands at about 4,800 at my plant, down from 6,700 in 1984.
- Our Division's annual payroll for 1987 was about $129 million, down from $185 million in 1984.
- Our plant made purchases of about $114 million in the year 1987 from about 1,500 suppliers, down from $142 million in 1984.
- Despite these factors, the workers at the Bethlehem Plant donated approximately $370,000 to charity in 1987.

With facts like these, we all, individuals, the company, and the Congress have the incentive to try and exert some control to stop the imports which are affecting the Bethlehem Plant marketplace by 40% in the wide flange structural market and 60% in the sheet piling area.

I identify with the industry in which I work and I realize, like my fellow co-workers do, that we have a stake in the Plant. That's why labor and management joined together as a Partners for Progress team for the common cause of America to ensure jobs at the Plant and keep pride in the American way.

The Department of the Army has issued a proposed regulation to reduce the present 50% "Buy American" preference for ACOE civil works supply contracts and replace it with the 6% and 12% factor. The steelworkers, their families, and the community of Bethlehem, PA. greatly oppose this action which would seriously hurt employment at the plant. None of us want to, or should have to, revert to higher unemployment as a trade-off for imports of steel products readily available domestically.

In 1985, over 30% of the Bethlehem Plant's production of sheet piling was shipped to civil works projects. The Plant is the only hot rolled sheet piling producer remaining in the United States and represents 12% of the total Plant's work in 1986.

I know that the 2,500 letters the workers at my Plant sent to Washington on November 18, 1987 recognize the basic principle that their tax dollars should be spent for American-made steel rather than foreign subsidized or foreign government owned steel.

The letters were received by a very supportive group that included Senator Heinz, Senator Specter, Congressman Ritter, and Senator Metzenbaum. Senator Specter echoed our feelings when he said, "It is just a matter of fundamental fairness that we ought to buy American when America is doing the buying." I'd like to also quote Senator Metzenbaum who said, "The Steel Caucus which I lead stands firmly behind the proposition that the COE should be following the former Buy America practice in order to keep jobs in this country. To me it's an absurdity that the US Army Corps of Engineers would even think about buying steel overseas. We need the jobs in this country, the Bethlehem Steel employees who have sent in these petitions, the management, the labor in Ohio. These are people who want jobs. We want them to have their jobs and I'm pleased that the COE has said they would reconsider their position. Let it be known that if they don't reconsider their position, if they continue to move forward, this Senator will do that which he has done in the past and this is go to the floor of the U.S. Senate with an amendment requesting the requirement of them to buy American steel. Thank you very much."

In closing, we believe it is in the United States Government's best interest to maintain in writing the 50% evaluation factor on civil works projects in order to ensure its continued viability of domestic production of such an important product as steel sheet piling that is produced at the Bethlehem Plant. It is an important part of the national goal of a full employment economy.

I would like everyone to know that the Steelworkers stand ready to meet the challenges of rebuilding America. We have the facilities, the skilled work force, and the technical expertise at the Bethlehem Plant and nationwide. We petition your support to that purpose.

Mr. Towns. Mr. Hoeflein, Mr. Dixon, Mr. Kling?

[Witnesses sworn.]

Mr. Towns. You may begin.

TESTIMONY OF H.H. HOEFLEIN, VICE PRESIDENT, PUMP GROUP, INGERSOLL-RAND CO., PHILLIPSBURG, NJ; ROBERT THORESEN, DIRECTOR OF GOVERNMENT AFFAIRS, VOITH HYDRO, INC., YORK, PA, THOMAS R. KLING, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PHILADELPHIA GEAR CORP., KING OF PRUSSIA, PA, REPRESENTING THE AMERICAN GEAR MANUFACTURERS ASSOCIATION, ACCOMPANIED BY STEWART R. WARD, PRESIDENT, BRAD-FOOTE GEAR WORKS, INC., CICERO, IL

Mr. Hoeflein. Thank you. My name is Hans Hoeflein; I am Vice President of the Pump Group at Ingersoll-Rand. I've been an employee of Ingersoll-Rand for 28 years and have served in numerous positions with the company.

Before I go into the written testimony, I'm sorry I was late in arriving, but I have a question to ask. Am I allowed to add anything to this, because——

Mr. Towns. Yes. By all means.

Mr. Hoeflein [continuing]. I received your letter while I was out of the country, so I would like to answer some of the questions that you asked. But let me read the prepared testimony first.

Ingersoll-Rand Company manufactures pumps at its Phillipsburg, New Jersey facility, which is located in Warren County. This facility employs approximately 1,000 people, who live in New Jersey and Pennsylvania. Total payroll in 1987 was $42 million, and Social Security withheld was $3 million, which was matched with $3 million paid by Ingersoll-Rand.

In recent years the company has been able to receive Corps of Engineers contracts, but not Bureau of Reclamation. The equipment purchased by the Bureau of Reclamation is not subject to the 50 percent evaluation factor; otherwise, it is the same class and scope of equipment.

It is not possible to predict the future impact of a change in the DFARS in our plant as we do not have any long-term forecast of civil projects from the Corps of Engineers. Additionally, as the projects have been let on a competitive basis, there is no guarantee of our receiving any contracts. Suffice it to point out that if the DFARS is amended there will be an impact on the U.S. pump industry.

At the present time this class of equipment is manufactured in several countries that have lower labor costs than the U.S., and often large balance of payment surpluses with the United States. A partial list includes India, South Korea, Taiwan, Japan, Italy, and the People's Republic of China.

It is our recommendation that the DFARS be continued with the 50 percent evaluation factor.

I would like to add a couple of things to the written testimony. I just arrived from Chicago this morning. We had a meeting of the U.S. Hydraulic Institute yesterday. The U.S. Hydraulic Institute, in a sales way, represents about 60 percent of the U.S. pump industry, and on an employment basis represents about 25 percent of the

U.S. pump industry. We had a meeting of the Executive Committee yesterday, and the Executive Committee has approved my saying that the U.S. Hydraulic Institute also recommends that the DFARS be continued as it is.

A couple of other comments on some questions that were raised in the letter.

We have found that if Mr. Thoresen had not advised us of this pending change in the rules, we at Ingersoll-Rand and the rest of the pump manufacturers in the United States would not have known of the proposed change.

Secondly, one of the suppliers of this class of equipment is a minority business located in Birmingham, Alabama, by the name of Ready Buffalo. They do not belong to the Hydraulic Institute. I think there is an impact on a minority business with this change in the regulation.

You gentlemen asked a question on what happens with public works contracts in other countries. I can specifically speak for Japan. In the case of Japan, they classify their market into two markets. One is called "Kanju," which is government, which is what we would consider to be public works; the other is "Minju," which is their industrial market. The "Kanju" market for pumps—there is no way that a foreign supplier can bid for public works projects in Japan. One of our licensees is a Japanese company, and through this licensee we know how the bidding process works for public works projects. There is basically a series of recommended or approved manufacturers. Contrary to our laws in this country, they basically decide who is going to get the contract based on market share.

In addition to that, the class of equipment that is used on public works projects, particularly for flood control and irrigation projects, is sold in Japan at price levels substantially higher than the same class of equipment that is sold on the world market.

That's the extent of the additional testimony that I wanted to add.

Mr. TOWNS. Mr. Thoresen?

Mr. THORESEN. Mr. Chairman, members of the committee, I am Robert Thoresen, Director of Government Affairs for Voith Hydro, Inc., a designer and manufacturer of hydraulic turbines for hydro electric power generation in York, Pennsylvania. On behalf of York I want to thank you for this opportunity to provide our comments on the proposed revision of the U.S. Army Corps of Engineers procurement policy. I would also like to add that our concerns in this matter are shared by our union, the International Association of Machinists and Aerospace Workers. They were represented here earlier by Ms. Dorothy Ellsworth.

While I would like to express our appreciation for the recommendation by Assistant Secretary of the Army for Civil Works Robert W. Page of February 18, 1988, to "take no further action at this time" on the proposed revision, it is important that U.S. industry be given this full hearing on the matter.

The 50 percent factor which the Corps of Engineers has applied since the early 1960's as a penalty in evaluation of foreign bids—that is, those bids with foreign content in excess of 50 percent—has been a positive factor for the United States' hydraulic turbine manufacturing industry. While international economic conditions have diminished the importance of this factor to U.S. suppliers in competition with manufacturers from the European nations and Japan, its significance is growing rapidly relative to manufacturers from a number of developing nations which are encouraging industrialization.

The procurement record is of interest. The Corps of Engineers, since the implementation of this evaluation factor, has purchased hydraulic turbines on the basis of domestic bides, even though the bidders have frequently been foreign firms utilizing domestic content in excess of 50 percent. By comparison, the U.S. Bureau of Reclamation, using the standard 6 percent evaluation factor during approximately the same period of time, purchased about 85 percent of the hydraulic turbines for its project on the basis of foreign bids, with over 65 percent coming from Japan.

There has been just one hydraulic turbine project purchased by the Bureau of Reclamation and very few by the Corps of Engineers recently. While that situation is not expected to change in the near future, the evaluation factor will continue to be important to the U.S. industry because it is fully expected that there will be a significant requirement for repair and replacement components, as well as rebuilding existing equipment to upgrade performance.

Balance of trade issues are a factor. The international economic situation which has developed over the past few years is very likely to bring about significant changes in the competitive pressures for the future of the Corps of Engineers' business. Devaluation of the U.S. dollar relative to the currencies of our European trading partners and Japan has unquestionably increased the ability of U.S. suppliers to be competitive against suppliers from those countries. The impact of the devaluation of the dollar on relative wage rates certainly enhances the competitiveness of U.S. manufacturers.

The negative balance of trade between the United States and our trading partners continues to grow, however. Even though that trend may be expected to decelerate and possibly reverse with those countries whose currencies have been devalued relative to the dollar, other nations whose currencies are closely tied to the dollar are likely to become increasingly important in the U.S. trade deficit picture. South Korea, for example, has retained a strong competitive advantage in wage rates. For 1987, for example, South Korean wages were just 13 percent of U.S. wages. One result has been a dramatic acceleration in U.S. imports from South Korea, far exceeding any increases in U.S. exports to South Korea. The U.S. trade deficit with South Korea increased 50.2 percent in 1986 over 1985, and 38.5 percent in 1987 over 1986, reaching a four-year cumulative trade deficit in excess of $25 billion.

Development of international competition is a part of the picture. During the past several years in internationally competitive situations, suppliers from developing nations—again, particularly those from South Korea—have, because of their low costs, been used as suppliers for castings, forgings, and steel plate for major hydraulic turbine components by manufacturers worldwide. In many cases, these components are supplied finish-machined to design drawings. While South Korea, for example, does not yet have a full-capability hydraulic turbine supplier, which would include research and development, engineering, and manufacturing, the result of placing subcontracts for major components with South Korean firms has been a rapid and significant growth in experience in the manufacturing sector for hydraulic turbines. With the very limited experience qualification that the Corps of Engineers is permitted to use, South Korean firms among others will undoubtedly feel encouraged to bid on future Corps of Engineers projects, especially solicitations for repair and rehabilitation of existing equipment. It is also likely because of the low South Korean labor costs and their manufacturing experience, that Japanese and other foreign suppliers will bid their own designs to the Corps of Engineers but utilizing major South Korean content.

In either case, a situation of continuing unfair competition for U.S. hydraulic turbine manufacturers, as well as our domestic subcontractors, emerges. There is no question that the international competitive climate is such that retention of the 50 percent evaluation factor by the Corps of Engineers is a significant factor in maintaining a strong competitive industry in this country.

Granting unilateral trade concessions at this time seems questionable. In addition, it seems that the proposed elimination of the 50 percent evaluation factor used by the Corps of Engineers in evaluating bids for its own domestic Civil Works projects is only justified on the basis of simplifying the procurement process. In our experience we have found no basis for suggesting that such simplification is required. Since the evaluation factor as applied is an existing trade restraint, particularly under the circumstances outlined, it would seem reasonable that if it is to be eliminated—and thereby benefit foreign suppliers—that some trade concession be sought in return. It is not in the best interest of this Nation's industries and economy to unilaterally eliminate an existing trade restraint, especially when we are searching desperately for ways to decrease, not increase, our record trade deficit.

Employment impact is significant to the businesses involved. According to our records, Corps of Engineers purchases over the past five years which have been awarded to U.S. suppliers of hydraulic turbine equipment have totalled approximately $20 million. Voith Hydro, Inc., and its predecessor company, Allis-Chalmers, shared in approximately half of that business. Our forecast for Corps of Engineers hydraulic turbine equipment purchases for the next five years is an estimated $30 million. If that equipment is supplied from domestic sources, it could amount to an estimated 225 man years of employment in our York facility, plus an additional 225 man years by suppliers and subcontractors, for a total of 450 man years of employment.

In conclusion, it is strongly submitted that continuing developments in the international marketplace, accompanied by our growing trade deficit, require the attention of every Executive agency and demand that every available action that might have a reasonable and positive impact be taken. In this case, that means retention of the 50 percent evaluation factor by the Corps of Engineers. Your assistance in this matter will be very much appreciated.

Thank you.

Mr. TOWNS. Thank you very much.

Mr. Kling?

Mr. KLING. Thank you. My name is Thomas Kling; I am President of Philadelphia Gear Corporation, located in King of Prussia, Pennsylvania. I am a member of the Board of Directors of the American Gear Manufacturers Association, and I am joined this morning by Steward Ward, President of Brad-Foote Gear Works, Cicero, Illinois. He is also a member of the American Gear Manufacturers Association Board of Directors. We are appearing today on behalf of the domestic members of the American Gear Manufacturers Association.

AGMA represents over 300 companies engaged in the design, manufacture, and application of gears, gear products, and flexible couplings. Gross sales for the industry in 1987, including foreign imports, was approximately $1.5 billion. Approximately 24 percent of 1986 sales were to the Federal Government. The vast majority of domestic manufacturers are classified as small businesses, having fewer than 500 employees.

Our purpose here today is to present the Association's views with regard to the Corps of Engineers' proposal to reduce the Buy America preference for equipment or supplies for Civil Works projects. In the notice of proposed rulemaking, the Corps incorrectly states that the proposed action will not affect small business, and further, that its impact is de minimis.

Prior to 1980, as many as 15 U.S. gear manufacturers sought business from Corps-related projects. In 1987, even though six domestic companies were prequalified, only three sought to bid on Corps programs. The primary reason was that experience had shown that foreign manufacturers, if their bids could be determined, were 30 to 40 percent below the lowest domestic bid.

One factor is absolutely clear. That is that foreign nations that have an indigenous gear industry do not allow or enable American gear manufacturers to win contracts for gear-based products on projects roughly equivalent to those engaged in by the U.S. Army Corps of Engineers. It simply doesn't happen.

Over the past two years AGMA has attempted to demonstrate the importance of a technically qualified and economically healthy gear industry. The Association presented material to the Congressional Commission on Merchant Marine and Defense in July, 1987. The Commission found in its report that the domestic industry is one of three industries regarding which the DOD should take action to prevent further erosion of its industrial base. The report of the Commission was published early this year.

The Association has also provided extensive material to the Department of the Navy relative to the negative impact of foreign sourcing on the few remaining marine gear manufacturers in the United States. The transfer of technology in national defense-related industries has been well publicized in the Toshiba case.

Last September the Association submitted testimony before the House Committee on Banking and Urban Affairs, a copy of which is attached. The purpose was to demonstrate the need for a fully operational, technically knowledgeable industry in times of mobilization. Our Association estimates that some 25 percent of defense contracts are currently awarded to foreign manufacturers. A placement of 25 percent of gear-based defense contracts overseas must be evaluated in terms of the additional fact that the American gear industry is a shrinking industry, but absolutely essential.

Many of the historic customers of our industry have found themselves in a serious state of decline due to foreign competition and other economic reasons. The American gear industry is being attacked from many sides. We very little need the Corps of Engineers to attempt to hammer additional nails in the coffin of an essential industry.

The direct effect is not only the loss of jobs, but the loss of taxes and eventual gear manufacturing capacity. Frankly, the development and maintenance of a foreign industry at the expense of the U.S. employee and the domestic industry is deplorable. In the late 1970's, a decision by the Coast Guard and the Department of Transportation to reduce or eliminate altogether the Buy America Act, had a direct and adverse impact on the marine drive sector of our industry. Philadelphia Gear, my company, for many years successfully bid on Coast Guard marine propulsion contracts.

The entire market for Coast Guard marine drives has gone foreign, along with the incidental jobs, technology, and investment in capital goods. Since the middle of the 1970's, the Coast Guard has not purchased a major new vessel with domestically-manufactured gear units. Foreign competitors have been able to offer better economic terms, offers based on special backing they receive from their respective governments to enhance their national exports to the U.S.—seemingly, always at the expense of the U.S. producer.

This committee should carefully enquire of the Corps of Engineers and the Bureau of Reclamation the degree to which there has been foreign domination of this market sector under the 6 percent-10 percent Buy America preference. It is my Association's best estimate that the penetration is to the extent of approximately 80 percent. I hear my colleagues who testified earlier agreeing with that.

Once again, the direct export is tax dollars, jobs, and industrial capacity.

The U.S. gear industry is greatly concerned that the proposed change will have the same impact on Corps work as it has on the public works sector of our industry.

As the President of the United States ponders the veto of the foreign trade bill, the questions of a level playing field continue to crop up. Free trade seems to mean "free to foreigners" but extremely costly to domestic manufacturers. Our State Department negotiates on their behalf not only MOU's and MOA's, as referenced earlier, but on their behalf with respect to other branches of the Government, State and Federal. U.S. gear manufacturers, rest assured, get no such assistance; quite to the contrary, domestic manufacturers are most often precluded from bidding based on foreign government regulations or practice. This is true both for public works as well as for military procurement.

Recently, Philadelphia Gear had the experience of negotiating with the Russians on a petroleum project, only to be told that our company could not participate due to a possible sensitive technology transfer. This contract was awarded to a division of the same Flender Corporation that does business in the U.S., even with our Corps of Engineers.

We wish to stress with the committee that since the beginning of the recession in 1981—and that recession, as it applies to manufacturing units, is still in effect—there has been a concentrated effort on the part of foreign gear manufacturers to penetrate the U.S. market. This has been achieved by a methodology which, if practiced by a domestic manufacturer, would be a per se violation of anti-trust laws. In many cases, predatory pricing was and continues to be dumping in violation of existing trade laws. The pursuit of an anti-dumping case is too costly and often unsuccessful due to the lack of hard data. The foreigners have adopted the "lost leader" approach to market penetration at the expense of our domestic industry. It is the rule rather than the exception that foreign gear manufacturers submit bids 30 to 50 percent below the lowest domestic competitor. This bid is also often reinforced by special interest and credit deals backed by the foreign government or one of its agents.

In addition to the price differential, the European bidders purport to bid on the basis of AGMA standards specified by the Corps of Engineers, but in many cases the products bid are not built to these American standards. It is necessary to explore briefly the difference between DIN, the German national standards, and the American gear standards. The American standards reflect careful consideration of anti-trust laws and an ever-present product liability exposure. American standards reflect more than 60 years of technological development and end-user/manufacturer experience.

Attached as a part of this testimony is an article published in Power Transmission Design in September, 1987. This article was written by the Vice President of the Association's Technical Division, Mr. Donald McVittie. This article explains the difference between the American and the German standards. Admittedly technical, the standards are so complex that there is almost a total lack of understanding of this very important issue. In all but a very limited number of Corps District Offices—even though each individual office sets the specifications for public works projects—there is little understanding of the relationship between American standards and German standards as they relate to Corps of Engineers public works projects.

The Europeans, when submitting bids on Corps programs, in addition to bidding at prices 30 percent less than domestic manufacturers, also proposed to produce an enclosed drive box which in fact does not meet Corps of Engineers established minimum specifications. A physical comparison of gear drives offered by our domestic bidders and those of our European competition would show by weight alone that a domestic gear box, weighing 30,000 pounds, would compete with a European counterpart weighing only 11,000 pounds. A careful analysis of the European gear box would indicate that the shaft size would not be able to meet American design criteria. Stated in simple terms, German rated gear boxes currently furnished to the Corps of Engineers do not comply with AGMA standards in that they lack sufficient strength and toughness to withstand loads which occur in Corps-related products. I would like to cite several examples.

On the Pickwick Dam project, a Corps-TVA program, the successful bidder at some 40 percent below the price of the lowest domestic bidder, was Hansen, a Belgian corporation. Almost immediately following installation of the gear drives it was observed that the keys in the gear box had failed. Basically, the gear boxes were too small for the application. The domestic bidders were knowledgeable, calling for a 280 percent startup overload strength.

The Corps of Engineers and the TVA, following the failures, realized the insufficiency of the Hansen boxes, and at substantial additional expense—a quarter of a million dollars—replaced the undersized boxes with domestically-produced drives in 1986.

In 1988, the Corps of Engineers on the Red River Lock and Dam project originally accepted a bid from a foreign manufacturer for a gear drive weighing only 11,000 pounds, when several domestic producers had given the Corps of Engineers specified designs for an open-gear drive weighing over 30,000 pounds. This disagreement has not yet been finally resolved; however, past history would indicate that the gear drive is undersized and is not, indeed, in accordance with American standards.

The domestic industry is of the opinion that there are currently in place, in Corps-related and Bureau of Reclamation projects, foreign produced gear drives which lack sufficient strength for the application and which fail to meet AGMA design standards.

When discussing a level playing field it becomes necessary to describe some of the standard terms and conditions with which domestic manufacturers must comply in order to bid on Corps projects. Required of domestic manufacturers, all of us at this table, are compliance with EPA regulations; OSHA regulations; Equal Opportunity; Affirmative Action for Veterans and Handicapped Workers; compliance with Walsh-Healey, and numerous other Federal statutes and regulations. Foreign manufacturers are not required to comply with these laws when they manufacture products outside the continental United States.

Furthermore, since Federal monetary policy has resulted in the devaluation of the dollar as against the yen and the deutschmark as well as other European currencies, there has been less than a 10 percent increase in their prices over this particular time period.

The proposed amendment by the Corps of Engineers is opposed by the American Gear Manufacturers Association particularly because, while the stated purpose is to eliminate confusion where none exists, the Corps of Engineers and the Defense Acquisition Regulatory Council proposed reduction of the Buy America evaluation factor will in fact be a major detriment to the domestic industry.

AGMA estimates that next year's potential gear-related Corps of Engineers business should result in $15 million to $18 million worth of business for the domestic industry. Potential loss of these contracts could result in the loss of approximately 500 jobs. The best estimate on the potential multiplier for the Corps of Engineers projects is 2.1 to 1.

It is hoped that this committee, in examining the issues surrounding this seemingly di minimus regulatory change, should require the Corps of Engineers to produce statistics with regard to Corps acquisition of gear products; their source, foreign or domestic; the number of failures which have occurred; the nature of the failures, and even the cost of correction.

Every effort should be made at the Corps of Engineers to level the playing field between the foreign and domestic producers of gear products. In addition, the Corps should establish a central engineering facility to establish standards and specifications for products acquired on Corps-related projects.

Contrary to recent allegations of the Defense Logistics Agency, the American gear manufacturers have not fallen behind the technology of our foreign competitors. The industry is technically qualified, has the productive capacity, and can compete with foreign competition provided that the playing field is level. We stand ready to serve the Corps of Engineers as requested. The Corps should be precluded from issuing regulations detrimental to our industry.

Thank you very much.

Mr. TOWNS. Thank you very much, Mr. Kling.

Just before we move on, we've been joined by the distinguished gentleman from the State of Illinois, Congressman Ken Gray.

Mr. Ward, do you have a statement?

Mr. WARD. No further formal statement.

Mr. TOWNS. Let me just begin by first asking you, Mr. Hoeflein—you indicated why you do not bid on foreign contracts. Could you tell us the difference between bidding on foreign contract versus what happens in the United States when they bid on our contracts?

Mr. HOEFLEIN. You may have misunderstood. I said we will not bid on a contract for a public works project in Japan. We have bid public works projects outside the United States, but not in Japan. We recently bid a job in Bangladesh a year and a half ago, which we did lose to the Japanese, by the way. But the comment I was trying to get across on the Japanese bidding is that first of all, we wouldn't be qualified. They wouldn't even let us bid. So the only way we've been able to do anything in the Japanese market is to work with a Japanese licensee, and it took him over two years to become qualified in the Japanese market to bid on Japanese public works projects.

I'm trying to think of where else we may have bid public works projects outside of the United States.

We've bid some projects in Latin America. The last one we bid was in Venezuela; we lost that one to the Swiss.

Mr. TOWNS. I think the statement that someone made was that you're actually bidding against another country in terms of the fact that the government of that country is actually subsidizing, which made it almost impossible for you to compete.

Mr. HOEFLEIN. I think somebody else made the comment, but we've had similar experiences. Basically, the major industrialized countries have much more beneficial financing packages. The Ex-Im Bank certainly is not offering what it was five or ten years ago. Also, in the case of the French government, they will guarantee the inflation rate. They will give the French suppliers insurance on their projects, which is not available in the United States. They will accept terms and conditions which we in this country will not accept because they are guaranteed by their government. So there are a lot of benefits to most of our foreign competitors when they bid internationally that we in the United States are not able to get at this time.

Mr. Towns. Mr. Kling, I think you indicated that DOD needs to take further action. What do you mean by that?

Mr. Kling. Well, my experience has been with the exportation of technology vis-a-vis the apparent reliance on or willingness to use foreign sourcing for main propulsion drives. We have seen that instance take place within the tender oiler program; it was, indeed, manufactured at Penn Shipyard, Congressman Clinger, where the main propulsion drives were awarded to Lohman-Stodderfeld, a West German company.

Mr. Towns. Thank you very much.

Mr. Oberstar [Chair]. The gentleman from Pennsylvania?

Mr. Clinger. Thank you very much, Mr. Chairman.

I am interested in the rationale for the difference in DOD contracting, which has the 50 percent evaluation factor, and the Bureau of Reclamation contracts where the evaluation factor is only 6 percent. Do you know what the rationale is, why one is 6 percent and the other is 50 percent?

Mr. Hoeflein. My guess would be—I believe that Secretary McNamara was Secretary of Defense at the time. He couldn't very well influence the Bureau of Reclamation. That's probably the reason.

On the subject of the 6 and 12 percent, you know, qualifying nations don't have the 50 percent evaluation factor. And in the last two years, we lost the Army Mobile Pipeline job to an Italian manufacturer. There was a classified Corps of Engineers project, so we don't know what the end use was, which was also lost to a foreign manufacturer who was a qualified manufacturer——

Mr. Clinger. A "qualified manufacturer" would be those within NATO? Or is it broader than that?

Mr. Hoeflein. It's primarily NATO. I think Mr. Thoresen has a better handle on that. I've seen in some of his writing exactly what determines a qualified manufacturer. We generally think of it as a NATO country. But like I say, in both of these cases—one was a classified project in the United States, and the other was the Army Mobile Pipeline job, and it would be our opinion that in case of a national emergency it would be extremely difficult to service this equipment since it was furnished by a foreign supplier.

I don't know whether you're familiar with the Army Mobile Pipeline job, but that is a project for the U.S. Army TROSCOM—Troop Support Command—where, in case of war, they would be furnishing mobile pipelines to supply the forward military elements with liquid fuel products. There were 220-odd diesel engine-driven pipeline pumps on that particular negotiation.

Mr. Clinger. Mr. Thoresen, in your testimony you said that there is "no question that the international competitive climate is such that retention of the 50 percent evaluation factor is a matter of critical importance."

The argument that we were hearing a couple of years ago was that we needed to have a level playing field, and that the major cause for a rising trade deficit was the fact that the valve of the dollar was totally out of sync with the rest of the world's currencies; that if we would only take aggressive action to get the dollar back into parity with the rest of the world's currencies, then that competitive disadvantage would disappear. I take it that has not happened since you assert that we still need to maintain this provision. Why not?

Mr. **Thoresen**. Mr. Clinger, it has happened to an extent. Our experience is that we are now much more competitive internationally and in this country with those nations against which our currency has been drastically reevaluated——

Mr. **Clinger**. Which would include Japan, would it not?

Mr. **Thoresen** [continuing]. Which includes Japan. That is not the case, for example, with South Korea and some of the other developing nations—South Korea, Argentina, Brazil—where, as I indicated in my testimony, in South Korea the wage rate remains at 13 percent of ours. They are focusing very heavily on industrialization. They are investing a great deal in industrialization in South Korea, for example. They have resources for providing steel, plate castings and forgings. Other suppliers of hydraulic turbine equipment, which is our field, are able to go to South Korea for supplies and keep their costs down in the international competitive situation. So the problem remains because their suppliers are not impacted by the reevaluation of the monetary situation.

Mr. **Clinger**. So you would anticipate that there will be no time in the near or long term when we would be able to eliminate or do away with the 50 percent factor?

Mr. **Thoresen**. That's right, because competitors internationally will want to participate in the market wherever it is, and they're going to use the most advantageous means that they can find to participate in that market—in this case, the U.S. market. And if that means, as I indicated, using their own designs and going completely international to the absolutely lowest cost supplier to be competitive, that's what they're going to do.

Mr. **Clinger**. Well, I think what we've found too is that once foreign suppliers have gotten shares of the U.S. market, they will go to far extremes to keep their market shares.

Mr. **Thoresen**. Absolutely.

Mr. **Clinger**. Now, you've all indicated you feel that many of your foreign competitors are in fact dumping products in the U.S. market, that is, vastly underpricing their products, to gain a share of the market. Have any of you filed anti-dumping actions against these foreign competitors?

Mr. **Hoeflein**. Not in our pump business, but Torrington Bearings is owned by Ingersoll-Rand, and they have just filed an anti-dumping action, I think within the last 30 or 45 days, Mr. Clinger.

Mr. **Clinger**. You are pursuing that?

Mr. **Hoeflein**. Yes, we are. And by the way, bearings, of course, have become a recognized national defense priority item. I think the Department of Defense has already taken some steps to start to protect the domestic bearing industry to a greater extent than they have in the past.

Mr. **Kling**. We have not filed any statements, primarily because of the cost and the difficulty in obtaining comparable domestic cost data. An awful lot of this is a custom-designed product and finding comparable prices on their national market is very difficult.

Mr. **Clinger**. You felt that bringing an anti-dumping action would not be advisable because you wouldn't be able to get the data to back it up?

Mr. Kling. You couldn't get the data to back it up.

Mr. Clinger. Mr. Thoresen?

Mr. Thoresen. I'd like to add to that. Our predecessor company, Allis-Chalmers in York, Pennsylvania, reviewed the possibility of filing a dumping action. We were pretty much discouraged from that by reviewing what had been done in the machine tool industry and the extraordinary job that some of the machine tool suppliers and Machine Tool Association had done to establish and prove dumping with no real results. As a result, we felt that it would be a waste of money to actively pursue it and spend the amount of money we'd have to spend to pursue it.

Mr. Clinger. So there's no remedy for it? You had no remedy?

Mr. Thoresen. We didn't see any remedy there.

Mr. Clinger. Mr. Kling, in your testimony you talk about a decision in the late 1970's by the Coast Guard and the Department of Transportation to reduce or eliminate altogether the Buy America Act and the adverse impact that decision had. How was that possible? How could they do that without——

Mr. Kling. I'm not sure, but I can tell you that the proposed hull drawings that come out and that are made available to us for bidding have laid in Z-F gear drives— Z-F being a German corporation—saying, "If you can bid as equal"—and obviously, it's a custom designed gear box that they have developed—"you're capable of bidding." Your ability to develop a new drive that fits the exact envelope that has been specified by a German manufacturer makes you non-competitive, so they have been able to standardize on a German manufacturer and indeed offer it to Americans to bid on, knowing full well that no one can.

Mr. Clinger. So what you're basically saying is that the Coast Guard used a subterfuge to avoid or to eliminate domestic suppliers?

Mr. Kling. That's what's obvious to us. We built the two largest Coast Guard driven power plants, for the Polar Star and the other Polar unit, the largest Coast Guard cutters in the United States. We produced those in the late 1970's at Philadelphia Gear, and are more actively pursuing the Coast Guard business. It's my understanding that those drives, by the way, are performing successfully.

We also built the drives for the U.S. Coast Guard Cutter Hamilton, which was just overhauled in our plant after close to 20 years' service. But since the late 1970's we have seen laid in on Coast Guard hull designs, German power transmission packages that preclude our ability to be able to compete.

It's apparent to us that a decision has been made to go overseas.

Mr. Clinger. You talked about the difference in quality between the AGMA standards and the DIN (West German) standards, and the complexity of those standards and the fact that the evaluation of standards is done on a regional office basis by the Corps.

Mr. Kling. That's right.

Mr. Clinger. Do you think that the determination on applicable standards should be centralized at the Corps headquarters?

Mr. Kling. That was the recommendation that I had. I guess an alternative to that would be for the Corps of Engineers to create a technically-qualified staff that is capable of evaluating DIN versus

AGMA standards and the attributable standards that apply to a particular gear box.

I personally have addressed different Corps engineering offices, and although their intentions are in the right place they frequently lack the technical expertise to make that kind of evaluation on a rather sophisticated piece of equipment, which is what they're being asked to do.

So centralized, ideally; lacking that, at least a degree of expertise put into each of the Corps' district offices.

Mr. CLINGER. The argument, of course, that is always raised against Buy America is that it provides protection to the industry which in effect takes away any incentive for domestic industries to become more productive, efficient, competitive, and that they should be out there competing in the market.

Do you feel that you have indeed made efforts in recent years to improve productivity and to improve your competitive posture in the world? And that even with those efforts, you still are faced with unfair advantages?

Mr. KLING. Well, let me comment from one viewpoint. I'd like Mr. Ward, perhaps, to speak from another viewpoint.

Philadelphia Gear is a privately-owned corporation. In 1979, the total employment was over 1,100. We serviced a wide range of industries, both defense, commercial, and indeed, foreign. Our current employment is under 500 people. We have had the International Association of Machinists as our bargaining unit. We had over 800 employees in 1980; we currently are at approximately 300 employees. This should give you some idea of the magnitude of the reduction of work and the price that we've had to pay for these alleged and real dumping infractions that have taken place from overseas. We have been severely damaged as a company, and the industry has suffered likewise.

Mr. Ward, I think, has an interesting story to tell as to how the reduction of forces has affected the fortunes of his company, Brad-Foote.

Mr. CLINGER. Mr. Ward?

Mr. WARD. We have, in the late 1970's and early 1980's, made an extensive investment in large bevel gear equipment, probably the largest in the world and the highest quality. It has made us very competitive worldwide in large bevel gears, so I don't think it's a case of competition. For example, on the Great Salt Lake project in which we participated with Ingersoll-Rand, we bid the bevel gears around the world and were selected by the Japanese firm—I believe it was Nishiawa—that originally got the project, until they backed out.

So we supplied the gearing for that, but if we try to extend those talents—and it's a talent we have; it's not a big market—but we've recently tried to go after the paper industry over in Europe. It's not a matter of price, which we can compete. It's not a matter of delivery or quality. It's a matter that they would file the gears by hand before they would buy from the United States, is what they told our sales people.

Mr. CLINGER. File the gears by hand?

Mr. WARD. That's what they said.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. Oberstar. I thank the gentleman.

The Chair would like to express appreciation to the gentleman from New York for presiding in my absence, which was unavoidable; I had to participate in a meeting with the Speaker and the House leadership on committee appointment matters.

I want to advise the panel that I have, late last night, read carefully through your voluminous testimony, including attachments and statements. I made marginal notes, many of which have already been covered by previous questions asked by other members. I have a number of points that I would like to review, but I did want to let you know that I am very much impressed with your testimony; particularly the specific examples of failure of foreign products—gears— in hydroelectric projects, which are the unique responsibility of the Corps of Engineers. I shall pursue those matters with the Corps; I would like to discuss them with you later when my turn comes.

The Chair recognizes the gentleman from Illinois, but before the gentleman begins, I want to mention at this juncture that in the Energy and Water Development Appropriations Act, which the House will consider later today, this and the previous panel and others will be gratified to know that Section 508, the last section in the bill, includes the following language for the purposes of Title III of the act of March 3, 1933, known as the Buy American Act: "A cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army." That is language in an appropriations bill; of course, it applies to fiscal year 1989 funding. We would have to act further, either in subsequent appropriations bills or in an authorization bill, to make that language permanent. But it does achieve an objective of this subcommittee and of the previous panel, and I'm sure of this panel, concerning the interpretation given to the word "temporary", which has proven to be a major loophole in escaping from Buy America.

The gentleman from Illinois, Mr. Gray?

Mr. Gray. Thank you, Mr. Chairman. I shall be brief because I'm sure we're going to be having a roll call shortly.

First I want to commend you for having these hearings. This is a very important subject. I want to join you in welcoming the panel and particularly Mr. Ward, who comes from my State of Illinois.

I have a couple of quick questions, one for Mr. Hoeflein. You mentioned in your testimony that you apparently do not have any long-term forecast of Corps of Engineers civil projects?

Mr. Hoeflein. That is correct.

Mr. Gray. Are you going to the division office, the district office, or are you contacting the Chief of Engineers here in Washington? What contacts are you making? Because almost every Army Corps of Engineers project is a long-term project. It usually takes 10 or 20 years by the time they build a project. We have two on the Ohio River, Lock and Dam 52 and 53, that will cost about $775 million. We've been planning those for 10 years and it's going to be at least two more years before they are ready to start construction.

The Chairman raised a very important point on cofferdams. There are two at Lock and Dam 24 at Alton, Illinois; there's a cofferdam there, and another one planned temporarily on the Ohio River. So that is a lot of money and a very important subject to talk about, cofferdams, in addition to the permanent structures.

But I was just trying to be helpful. I was wondering why you wouldn't know what the long-term needs of the Corps would be if you were contacting the Chief's office here in Washington versus, maybe, the District Engineer out in Pittsburgh?

Mr. **Hoeflein**. The reason for that is that we're in the pump end of the business, and the type of projects that we get involved with are generally in the $500,000 to $1 million or $1.5 million category.

Mr. **Gray**. So you deal primarily with the contractor or the subcontractor, then, versus making an overall project bidding?

Mr. **Hoeflein**. Right. In many cases—in fact, the first job we received where we dealt directly with the Corps was the Mill Creek project last year, and that was in the State of Ohio. That was a $3.8 million project, but it was very unusual for us in that we took it on a turnkey basis where we're also responsible for the civil work. That was a type of approach that we felt we had to take to be able to get that kind of work. We had never done that before.

But most of our stuff, by your terms, is relatively very small. We can't go to the Corps and say, "How many pumps are you going to buy in 1988 or 1989 or 1990?"

Mr. **Gray**. But the Corps is tracking the projects, as our very able Chairman pointed out. Just today our appropriations bill for Water and Energy is on the House floor, and we have a report accompanying the bill that lists every project in the United States that is under construction under the heading of "construction." And we also have a planning section, so you can track a project from the time that this committee gives the authorization until the appropriations committee actually funds a project—first they fund a reconnaissance study, then a study, then planning, then construction. So it's all line-itemed right in that bill, and I'm certain that your Member of Congress or any one of us would be happy to supply you with that report.

Mr. **Hoeflein**. That would be great. Maybe it's just because we don't have enough experience. With the Navy, it's easy for us because we basically can tell by the shipbuilding program—all we have to know is what ships they are, what class of ships, and we can basically tell what pumping equipment is going to be required for each class of ship. That's basically simple.

Mr. **Gray**. Every project is listed alphabetically by State, so you could track them very easily.

Mr. **Hoeflein**. But do they say what is included in each project?

Mr. **Gray**. It will tell whether it's planning or construction, and whether it's an increment of construction. On the left side it will tell what the overall cost of the project is and how much is being funded this fiscal year, which starts October 1. So we'd be glad to get you a copy if you want it. I think it would probably be helpful in that respect.

Mr. **Hoeflein**. I would appreciate that.

Mr. **Gray**. Mr. Chairman, I wasn't here earlier, but is it my understanding that the Corps of Engineers is backing off somewhat on their proposed rulemaking?

Mr. **Oberstar**. The Corps—or the Department of the Army—will state in their testimony that they have decided to withdraw the proposed rulemaking.

Mr. **Gray**. Well, your hearings and these gentlemen coming have been immensely helpful. For that we thank you.

Mr. **Oberstar**. Thank you. I appreciate the gentleman's comments.

The gentlewoman from Maryland?

Mrs. **Bentley**. Thank you, Mr. Chairman. I want to join in with the remarks of Mr. Gray.

Incidentally, the statements of the panel were superb. I think your industries are some of the most important, basic industries that any industrialized nation has. You have certainly provided us with some excellent information which will be useful in the future. Turbines, bearings, pumps, gears, and steel and machine tools—I think those are the guts and the heart of an industrialized country.

Whenever I've complained about our eroding industrial base, one of the counterattacks on me has been, "Well, we revved up in World War I; we revved up in World War II, and we can rev up again if we have to." I'd like your opinion on that. I'd like to hear from each of you about our status today versus where we were at the start of World War II in 1941.

Mr. **Thoresen**. I'll start since I'm on this end.

We'd have problems. In our industry there are certain items of supply that we simply can't buy in this country any more—forgings, castings. The foundry art has been lost to a certain extent in this country. We can do some of it ourselves, but there are certain items that we have to go overseas for, and I think that goes back to a very basic industry, and that's the machine tool industry. I think there are certain machine tools in this day and age that you just simply have to go overseas for if you're going to get state-of-the-art equipment.

So we have a problem.

Mrs. **Bentley**. Could that be a problem, that going overseas, in a period of emergency?

Mr. **Thoresen**. I'm not that kind of a strategist. I would guess that it could be, but I certainly can't give you a definitive answer to that.

Mrs. **Bentley**. Mr. Hoeflein?

Mr. **Hoeflein**. From the strict question of manufacturing the equipment, our company is spending $10 million in Phillipsburg, New Jersey over the next three years to modernize the facility.

The ability to make the equipment exists. The problem, as Mr. Thoresen pointed out, there are certain basic things that we can no longer get in this country. The foundry situation in the country is extremely limited, especially when you get into larger castings. On the Great Salt Lake job that Mr. Ward spoke about earlier, we had to buy the impellers, which are 13 feet in diameter, in Holland. We could not get those in the United States. On the Mill Creek project, which is the Army Corps of Engineers job which we received last year, we had to buy the motors—that was a $3.8 million job; the motors were worth $1.3 million—we had to get the motors in England.

There are basic things that are happening in our country that just make us incapable in case of national emergency to mobilize like we did in 1940 and 1941. We couldn't do it today.

Mrs. **Bentley**. Mr. Kling?

Mr. **Kling**. I think our industry is rather unique in that, although we are an industry that the Association represents of 300 companies, there are no gear-making machines that are capable of supporting the United States Navy manufactured in the United States.

Mrs. **Bentley**. None?

Mr. **Kling**. There are no gear-grinding machines. We have seen our United States Navy going into hardened, encased round gearing. If you want to buy a gear grinder, you will go to Switzerland, East Germany, or West Germany to get a gear grinder. There are none manufactured in the United States. If one should need one to become a self-sufficient entity in case of a national emergency, the typical lead time is two years, so you'd best anticipate that emergency by that far.

When you start exporting Government programs and defense activity overseas and you lose the infrastructure that is supporting this defense establishment, it is lost forever and it can't be recaptured.

Mrs. **Bentley**. Does the Navy understand this?

Mr. **Kling**. We have testified before the Navy on this particular subject. Yes, ma'am, they are aware of it.

Mrs. **Bentley**. Have they shown more interest recently than they did, say, two years ago or four years ago?

Mr. **Kling**. They have shown a greater awareness, yes.

We feel also that the Coast Guard incidents that we are aware of—although not as critical as main battleships, certainly it takes a whole lot of building blocks to build an industry. When you want to be in the marine industry you can't say, "Well, we will develop an infrastructure that is capable of building battleships and aircraft carriers, but we're going to forget about minesweepers and Coast Guard cutters and destroyers." That is indeed what appears to be happening.

Mr. **Hoeflein**. May I make one additional comment, please?

When we lost this Army Mobile Pipeline job to the Italians a year or so ago, we involved Congressman Jim Courter from New Jersey and Don Ritter from Pennsylvania, because that's where most of our employees are, and we went into lengthy discussions on this particular subject with the Army. I have to be very frank and say that the Army placed part of the blame back on the Congress. They said that the Congress has put certain requirements on Army procurement practices that make it impossible for them to do some of the things that we think they should do.

Mr. **Kling**. Congresswoman Bentley, one other comment I would like to make.

The United States Navy, in an attempt to create a degree of expertise within its technological staff, has selected to send certain officers and/or civil servants to both Munich and Zurich, the homes of the German and the Swiss gear-making activities, so that they can be made knowledgeable of state-of-the-art gear manufacturing facilities. We take exception to that; we feel that there are, indeed, technical capabilities within the United States, and that we are wasting a valuable resource by not, first of all, funding those kinds of studies within the United States, and indeed, keeping our work at home which can build the infrastructure that will be able to support national defense needs in time of an emergency.

Mrs. BENTLEY. Mr. Ward?

Mr. WARD. I think the number one problem would be the lack of availability of castings, which was mentioned earlier; and number two, machine tools. The only company in this country attempting to make the type of machine tools that we would need is Gleason in Rochester, New York.

We have seen a small blip. For the past four or five years it's been a very low marketplace for us. This year we've seen a little bit more business, and the foundries are at capacity for the moment for the size gearing that we need.

Mr. THORESEN. Congresswoman Bentley, may I offer a general comment, using our facility in York, Pennsylvania as an example?

As I indicated earlier, we're a hydraulic turbine manufacturer. We're the only remaining hydraulic turbine manufacturer in this country with a full capability to research, develop, engineer, and manufacture a hydraulic turbine.

We went into the business in York, Pennsylvania in 1877. We have been manufacturing hydraulic turbines since that time. That results in a continuity of technical experience that exists within the members of the technical team in York, Pennsylvania. If you take a team like that that has that kind of background experience, those that have been passed on, not only through formal education but through people who went through that situation before them and have become familiar with that total technology—if you take a team like that and disband it, it's gone forever. You don't put that back together overnight or a year or two years. You've lost a great deal.

Mrs. BENTLEY. Mr. Chairman, a comment on what Mr. Hoeflein said about what they have been told by the Army and others, that some of the demands of the Congress that have been laid upon the Defense Department—I have heard that when I have talked to the Defense Department, and I think, since we are getting into this whole area and the importance of retaining a basic industrial base, it might bode well for this committee to look into that as well, too, on that aspect of it. What has the Congress thrust upon the Defense Department that is forcing them to go overseas for some of these purchases? I think we do need to look into that.

Mr. OBERSTAR. If the gentlewoman would yield, the Chair intends to pursue that matter further. I think we need to develop that information. We need to be precise about just what those requirements are and how they impact the industries, as expressed in the testimony. I appreciate the gentlewoman's raising that point.

Mrs. BENTLEY. Thank you.

Mr. Kling, I particularly want to commend you for pointing out that there are such demands for retaining standards in this country vis-a-vis those overseas producers who do not have to meet those standards. I think that is important, and it is particularly important if Congress has been responsible in any way in forcing these purchases overseas.

I also want to commend you for bringing up the EPA regulations, compliance with OSHA, compliance with Equal Opportunity, Affirmative Action for Veterans and Handicapped, compliance with Walsh-Healy, etc., that the foreign manufacturers are not required to match. Something needs to be done to put American producers on an equal footing in that way.

Mrs. BENTLEY. Once again, I want to say that you have brought out some excellent points. I appreciate your testimony this morning.

Mr. OBERSTAR. I thank the gentlewoman for those questions. It's always a pleasure to have her participation in those hearings because she brings a unique perspective, having served on the Federal Maritime Commission as the Chair of that Commission, and as one of its most vocal members. She brings a great familiarity with the defense industrial base from experience there, as well as her experience in serving on the Committee on Merchant Marine and Fisheries. We know that representing Baltimore as a major shipbuilding and steel producing area provides a perspective that is so valuable. She brings a wealth of experience to these hearings.

We greatly appreciate your participation.

I want to focus for a moment on the matter of our procedures, provided in Federal law, for leveling the playing field, and that is the anti-dumping procedures. Your testimony earlier indicated you had little success and little enthusiasm for pursuing remedy under the Anti-Dumping Act. I can perhaps understand some expressed thoughts as to why, but I'd like to hear it from the panel. What have been your concerns, your frustrations, or perhaps the modest success that you might have had in pursuing remedy under the anti-dumping statutes?

Mr. KLING. I might have an example that would indicate the problem that we're up against. I'm not sure it explains our lack of action, but perhaps you'll understand where we're coming from.

For some period of time we have been suppliers to fossil fuel plants for coal grinding equipment. When we talk about an "essential industry," this creates electricity. We designed them for several of the boiler manufacturers, and indeed, we sold our design to them as part of getting the initial programs.

We lost several large contracts when we saw 220 yen to the dollar and 3 marks to the dollar, and we accepted that as part and parcel of the fact that the currencies had swung that far. This is a very customized gear box. Approximately six months ago, this same contract came up for renewal, and I can tell you, Congressman and the committee, that it's amazing that the Japanese price is exactly the same at 240 yen to the dollar as it is at 123 yen to the dollar. Our calculations and computations indicated that that is below what we would consider as the percentage of material component that goes in there.

Now, how does one go about attacking a specific manufacturer on a specific program when his argument may very well have been—and we have heard it—"Well, we bought long forwards three years ago, and we're maintaining currency parity or competitive through forwards," or, "We, indeed, have very preferential steel forging material costs from the indigenous industry which Japan feels is necessary to maintain." And am I capable, as a mediumsized company, of generating the legal bills and dedicating the executive time to start chasing one after another—particular incidents like this—back into the hole? Or do you in essence say, "Hey, they've gone after market share; they're going to maintain market share. I can spend a couple hundred thousand dollars with lawyers and maybe or maybe not win it, or I can go out and chase something else."

I'll be quite honest, our personal approach has been to go out and chase something else. We've let them maintain that particular piece of the market share.

Mr. **Oberstar.** Your response demonstrates the complexity of U.S. law that is supposed to protect American industry against unfair practices of foreign competitors, and yet operates to the disadvantage of those whom it is designed to protect. The law is so complicated. It operates under our American concept of jurisprudence, that you must bring the case; you must develop the facts; you must go to the perpetrator of wrong and develop the information that you need to use against that person in proceedings in a U.S. court. No other country operates in that way.

The Japanese don't want Americans to do business in Japan. They just simply shut the door. No extensive proceedings. No hearings before international trade commissions and reviews by higher authorities. They just simply shut the door. We've seen it in this committee in the international aviation cargo trade. We've seen a myriad of practices put into place to deny U.S. firms entry to Japan's market. We've seen it in the European Common Market.

What you've said is that you cannot afford the legal procedure and this is not a small industry. Your testimony indicates that collectively you have $1.5 billion in sales, you have 300 companies, there are probably collectively in excess of 10,000 employees today; this is not a small industrial sector. It's a very important and fundamental sector of U.S. industry. And yet, for you as an industry collectively, the legal procedure to rectify wrongs, to level the playing field, to compete on an even basis, operates against you. You are not able to avail yourself of the protection of U.S. law in order to be able to compete in an industry where, as we've already heard, you have 100 years of expertise. Now that base is being whittled away.

I raise this because it is vitally important to understanding the significance of the Buy America Act to our industry. That law doesn't ask anyone to present evidence in court and go to extensive legal procedure to defend yourself. It just says: we know that foreign practices are discriminatory, keep U.S. goods out of foreign markets, and—as you've just indicated—manipulate the cost of the foreign market to fit whatever the market will permit in the United States so that they can gain a foothold. And we're saying: just draw the curtain; that's an unfair practice; we're not going to allow it in.

We're going to give more than a preference. We're going to have the law come down on the side of the U.S. competitor.

What we hear is that there are other remedies, that we shouldn't have Buy America laws—say critics—because there are other remedies that U.S. industry can follow. You've just demonstrated that you can't pursue it. Cost-wise, you can't develop the information.

You cannot penetrate the foreign markets to get information about competitors to U.S. products. So the only defense in a manifestly unfair competitive field is the Buy America Act.

Have I overstated or understated the case?

Mr. KLING. I think you have stated it very well, Congressman, and I appreciate your opinion on it.

Mr. OBERSTAR. Now, your testimony on page 7 references the Flender Corporation. Could you explain that a little further? Who is this? What is their national origin? What is their significance? It seems to be an important point.

Mr. KLING. The Flender Corporation is a German corporation. It has manufacturing facilities in several countries throughout the world, some licensed, some wholly owned. It has, we understand, a specified goal of doubling sales every year. They have been, without a doubt, the fastest growing producer of power transmission products in the world over the last five to six years. They have proven that predatory pricing, indeed, has its just desserts. They have been able to finance this growth. They have been able, indeed, to move into markets where few others have. They have recently, I understand, sold a percentage of stock—although it is principally privately-held, and that portion of stock was sold to the Deutsche Bank, I understand, so that they have a partner in their expansionary practices. We find them as one of the most difficult competitors coming into the United States on a pricing basis.

Mr. OBERSTAR. With that far-flung an empire they certainly are able to manipulate prices, as you called it, predatory pricing practices to fit whatever the market will bear, come in under whatever price they think may be necessary?

Mr. KLING. Yes, to be sure.

Mr. OBERSTAR. Thank you for that explanation.

I would like to ask the panel again, your testimony cites differences between DIN standards and AGMA standards. And I will also pursue this with the Corps. You suggest standardization of specifications on products.

How can the European manufacturers come in to bid on a product or a project using German industry standards when the bid specifies AGMA standards?

Mr. KLING. The bid will specify Philadelphia Gear, Brad-Foote, or equal. They will provide a catalog which, by their rating standards, is capable of transmitting horsepower—torque, if you would, being able to withstand overhung load—and don't forget, now, they are bidding to the mechanical contractor. They're not bidding directly to the Corps. They're a sub of a sub. You have the Corps, then the general contractor, then the mechanical contractor, and then we who provide equipment.

Obviously, the price competition at this level is very, very tight, and any avenue or access that this sub-sub-contractor has to getting goods which allegedly will meet the horsepower required by a catalog that is published and is deemed acceptable, or at least has been accepted—and if you ask me for the rationale behind the Corps' acceptance of it, I don't have a rationale. I don't think the individual Corps offices are capable of evaluating the engineering data that is required in a comparison of German versus American gear manufacturing standards.

Mr. **Oberstar**. Does the language "or equal" appear in these bid documents?

Mr. **Kling**. Usually, yes. In fact, I'd say always yes.

Mr. **Ward**. I'd say yes, too.

Mr. **Oberstar**. Who is in a position to measure "or equal"?

Mr. **Kling**. Obviously, that is the Corps district office's responsibility, and I question whether or not that ability exists within the Corps district offices.

Mr. **Oberstar**. There is no objective standard? It is within the responsibility of the contracting officer to determine whether the product offered in that subcontractor's bid is in fact equal to the standard?

Mr. **Kling**. That is my understanding of how the system works. And the system works that way because there are not technically qualified people in this particular discipline located in each individual Corps office, and that works to our detriment.

Mr. **Oberstar**. Have members of this panel, or as an industry association, have you asked the Corps to establish a standardization process?

Mr. **Kling**. Yes, we have.

Mr. **Oberstar**. What's been their response?

Mr. **Kling**. Their response is still pending.

Mr. **Oberstar**. I think that's something that we need to pursue. There is no way that differing products for the same unit can be accurately measured unless you have a basis of standardization on which to measure. As you describe in your testimony about the three units that failed—if we take the second comparison in your testimony, on Lock and Dam 26, "a gear drive 50 percent smaller than the gear drive bid by domestic manufacturers at a 40 percent lower price," and the product didn't work.

Mr. **Kling**. Again, the expertise does not exist within the Corps offices. They had to go out and hire a consultant to determine, on technical evaluation, that "We've got apples and oranges here, fellas."

Mr. **Oberstar**. It didn't work.

Mr. **Kling**. That's how they are so much cheaper. That's how they weigh so much less. But indeed, the technical expertise does not exist within the Corps offices, and this is where the decisions are being made. That's where it has been charged, "You make the technical determinations within the Corps district offices."

Mr. **Oberstar**. Mr. Thoresen?

Mr. **Thoresen**. Mr. Chairman, I'd like to offer a general comment. In my experience and our experience, I believe the procurement process within the Government agencies has evolved over the past 10 or 20 years to the point where the end product is less and less controlled by the technical staff of the engineers and more and more controlled by the procurement officers and legal opinion.

Mr. **Oberstar**. Which gets us into problems of the kind that you've described in your testimony. You can make things legally equal, but they're equal only on paper.

How would you envision a standardization process or review system to be established? Could it be similar to one of the national academies of engineering, something along that line?

Mr. KLING. My suggestion—again, as it pertains to the gear industry—is that we have gone to great lengths to generate standards for the American industry. It is an ongoing program that the American Gear Manufacturers Association continues to work on. It appears that every year we are reviewing or issuing 10 to 15 new standards.

These standards are very technical by their very nature. We have people in Corps offices who are attempting, obviously, to worry about large expenditures of money, the management of a program, cost overruns—now, someone is all of a sudden coming down and renewing, reviewing, and implementing technical standards on a de minimis, perhaps, portion of a multi-million dollar program. We're talking about a $50 million dam that has half a million, maybe a million dollars' worth of gear drives on it. How much technical expertise is going to be directed at it? Very little, unfortunately, because they tend to be the parts that move on a dam, and the parts that break don't move any more, and we obviously have problems that cost the United States Government money and, I would assume, the Corps of Engineers embarrassment.

My recommendation would be that the Corps of Engineers have either a central office where they can afford to have a trained staff; or if they're willing to spend the resources, indeed, train the regional offices with the appropriate evaluating skills to make a true evaluation of, "What am I getting for my money when I specify an AGMA standard-designed drive?"

Mr. OBERSTAR. That's very significant, and it's a matter that we will pursue with the Corps. Your first example in your testimony of the Pickwick Dam TVA project, points out that the domestic bidders for the gearbox responded to a 280 percent start-up over-load strength, and the prevailing bid—a foreign product did not and ultimately failed. The Corps and the TVA had to come back at an expense of a quarter of a million dollars and replace the underdesigned gear drives with domestically-produced drives. That provided some business for U.S. firms, but it should have been done right from the outset.

That is the juncture at which this standardization committee or process should identify a non-qualifying bid.

Mr. Ward?

Mr. WARD. It's back to what Tom was saying. It's an understanding of the AGMA standards that we live by and that all the gear companies in our organization design by, and it's going down each formula and calculation in order to determine it. One easy example is, if the Corps wants a 500 horsepower gear box running at 600 RPM, the output shaft driving the machinery would be three inches, AGMA. And I'm using round numbers.

The foreigners using DIN could say, "Our box will transmit 500 horsepower at 600 RPM," but their shaft will be about two inches in diameter. Now, the strength of a shaft is to the third power, so that means that our shaft is three times as strong. You can say, well, why does it have to be that strong? Well, through experience over the years in AGMA and with these startup torques that Tom was talking about, it needs to be three inches. If the Corps doesn't go down and look at each attribute it's going to miss that, because they do qualify by saying, "Our gear box will transmit 500 horsepower."

Mr. OBERSTAR. But it won't operate under peak demand time or the most pressurized conditions?

Mr. WARD. That's right.

Mr. OBERSTAR. We have experience with this sort of thing in aviation, where our committee has jurisdiction as well, in reviewing standards by the FAA. You have enormously more power required at takeoff than you do in flight. If you don't have that backup capability the aircraft may not be able to take off, and it may not be able to function under the most needed of conditions. You may have a snowstorm or a rainstorm, or a possibility of a runway incursion. That's when you need that extra power. That's when it has to be there. That's why you have standardization procedures, to assure that the required strength will be available at all times.

And that's when we lose out to foreign competition, when foreign producers come in and just barely meet our requirements or meet them under certain—but not all—conditions.

Mr. HOEFLEIN. Mr. Chairman?

Mr. OBERSTAR. Yes?

Mr. HOEFLEIN. You know, a couple of times what we have had to do—and sometimes we complain about some of the things that you folks do, but Freedom of Information has worked for us a little bit—we've been forced to look at what they're doing and actually do the work for them, and say, "Hey, this thing you folks have bought or are getting ready to buy doesn't really meet your needs. It won't even work." And on several occasions on major projects we physically had to do that. They just didn't know what they were buying, and I think that's the same as the experience of the gear people.

Mr. OBERSTAR. Thank you.

Have any of the companies in your Association lost contracts to the countries listed in your testimony on a Corps bid?

Mr. HOEFLEIN. We have, of course, yes.

Mr. OBERSTAR. Can you supply for the record those occasions?

Mr. HOEFLEIN. I'll have to send it to you, yes.

Mr. OBERSTAR. Would you do that, please?

Mr. HOEFLEIN. Sure. (See letter on page 442.)

Mr. OBERSTAR. Does Ingersoll-Rand supply directly to the Corps, or does it go through construction contracts, or both?

Mr. HOEFLEIN. We have supplied directly to the Corps and we have supplied through contractors. The Mill Creek project, which we received last year, was contracted directly with the Corps. We got a job five or six years ago, of all things, through a Korean contractor for the Corps of Engineers. Hyundai gave us an order for the King Khalid Military Academy in Saudi Arabia which was funded by the United States Government, but the contract was administered by the U.S. Army Corps of Engineers in Winchester, Virginia. So there's a whole gamut of ways this thing could happen.

Mr. OBERSTAR. It sounds very much like the testimony that we heard last week about mass transit, and how American producers are just hanging on by being subcontractors to foreign companies that are the prime bidders.

Mr. HOEFLEIN. Well, I don't want it to sound like we're negative——

Mr. OBERSTAR. No, I understand that, but the irony is evident in what you're telling us.

Mr. HOEFLEIN. Oh, sure. Our company, in the pump end of the business, we manufacture outside of the United States as well. We'll take these guys on anywhere in the world if we have to. We manufacture in Canada. We manufacture in Australia. We manufacture in Spain. We manufacture in the U.K. We're not going to roll over and die for these people, but it does make life very complicated and you've got to watch them.

Mr. OBERSTAR. How do Buy America procedures differ in the two circumstances, direct contracts and construction contracts? How does the application of Buy America differ?

Mr. HOEFLEIN. I would say that on the Mill Creek project, the 50 percent evaluation factor was a mechanical process that the Corps must have gone through. I don't even know if there were any foreign bidders on Mill Creek. There may not have been because, as I said, it was a turnkey project.

On the King Khalid Military Academy, because Hyundai placed that order, I don't think it was even applied.

Mr. OBERSTAR. Mr. Thoresen, Mr. Kling, Mr. Ward, do you have any comments on how Buy America differs in the two circumstances?

Mr. THORESEN. It would not have applied for projects outside the United States. The evaluation factors apply in general only for Civil Works projects for domestic supply.

Mr. HOEFLEIN. Even if they are U.S.-funded.

Mr. THORESEN. Unless it's A.I.D. funding. If it's A.I.D. funding, then there is a requirement for U.S. supply. That's separate from the Corps of Engineers. That's an A.I.D. requirement.

Mr. KLING. Our experience has always been as a third- or fourth-tier contractor, so we have had limited sales directly to the Corps other than spare parts.

One thing that we are uncertain about, is the 50 percent evaluation factor applied to each line item? Or does this only apply to the total project? It's an issue which we, as executives within the industry, don't have an answer to, and I'll be quite honest, our Association is not capable of providing us with an answer prior to testifying right here.

Mr. OBERSTAR. Mr. Ward, do you have anything to add to that?

Mr. WARD. I agree with him. We don't know whether the 50 percent applies to each line item or not.

Mr. OBERSTAR. It's difficult to compete when you don't understand what the ground rules are. But you can ask for it under the Freedom of Information act?

Mr. WARD. But then, it's generally too late. It's very difficult to get them to reverse themselves, even when they're wrong.

Mr. OBERSTAR. Thank you.

Was there any consultation by the Department of the Army or the Corps of Engineers with the American Gear Manufacturers Association or individual members prior to announcement of their proposed rulemaking?

Mr. **Kling**. Not that I'm aware of.

Mr. **Oberstar**. It was just done?

Mr. **Kling**. Done.

Mr. **Hoeflein**. If Mr. Thoresen hadn't advised the Hydraulic Institute, we would not have known. No pump manufacturer in the U.S. was approached.

Mr. **Kling**. We were notified by Mr. Williams of Bethlehem Steel, so we found out from him.

Mr. **Oberstar**. Isn't that unusual? Is there usually a consultation back and forth with the Corps on technical matters?

Mr. **Kling**. We worked very closely with the Corps in helping them specify different routine equipment specifications, and traveled to all of the different Corps offices. We were never notified of this proposed rule change. Admittedly these are technical conferences, and maybe there's a separation of responsibility, but we were never notified until Mr. Williams of Bethlehem told us.

Mr. **Hoeflein**. The Army would take the position that they published the proposed rule change, and it was up to us to know that they had published it.

Mr. **Oberstar**. Well, we will pursue that further.

Your testimony cites bids of foreign manufacturers as 30 to 40 percent below the lowest domestic bids. How can that be? How did they get to that level? Is that a competitive price? Or is this, again, a reflection that they are bidding fundamentally different, not the same, materials and products?

Mr. **Kling**. I think what I tried to do in my testimony was tie the two together, the reduced price—and if you will remember, in two instances, the reduced physical size, the mass that was designed to do a particular program.

Mr. **Oberstar**. Right.

Mr. **Kling**. One job that's out for bid right now, Lock and Dam 26, Mr. Ward's company and my company are bidding gear drives that weigh approximately 30,000 pounds. We are competing against a German-made gear drive that weighs 11,000 pounds. Do you understand how they could be 30 percent below us in price? They are bidding a different product.

Mr. **Oberstar**. That is a portion of the problem that we are facing. There should be some trigger mechanism in the Corps review that catches this discrepancy so that equal products are being bid against each other.

Mr. **Kling**. That's what we're asking for.

Mr. **Oberstar**. The gentlewoman from Maryland?

Mrs. **Bentley**. How can they be bidding a different product to that extent? How do we let them get away with this?

Mr. **Kling**. We're not letting them get away with it. We're here today, Congresswoman, and we hope that they aren't.

There indeed are manufacturing differences that can create a variation between them. There is not, to the best of our knowledge—having 30 years of gear-making experience on Mr. Ward's part and 20 years on my part—the ability to manufacture the "same as" for a 70 percent weight difference.

Mrs. BENTLEY. Mr. Chairman, may I ask another question along that line?

Mr. OBERSTAR. I continue to yield to the gentlewoman.

Mrs. BENTLEY. Thank you.

What is the replacement capability regarding components and spare parts as they wear out, for foreign products versus American products? I know some of the troubles that we've had on ships in that arena, and I'm just curious as to what happens on shore as to turbines gears and bearings.

Mr. WARD. As far as the gearing goes, the gear boxes, it's just metric versus American. It can be duplicated, but it takes time.

As far as the bearings go, and as far as saying that it will do the job, it's back to the standards. If they buy the spares, if the counties or whoever is doing the procurement of the spares does not bring in the standards that it was originally designed to, there's no problem with duplicating the parts for spares.

Mr. KLING. We don't know exactly how they solicit spare parts inquiries from foreign manufacturers. We typically receive inquiries through a Government or arsenal or Corps office to provide parts. I have no idea how the foreigners are solicited for spare parts, nor do I know what their record is in supplying them. I would assume it's pretty good because the margin on parts then could be much better than on original equipment.

Mr. HOEFLEIN. Congresswoman, let me divert a little bit from the Department of Defense business because we do have foreign manufacturers in the pump industry in the United States that are now competing with us.

What the reputable ones will do, in the area of bearings, quite often they will use American bearings rather than foreign bearings. They will buy bearings, or it will be a European standard that is also available in the States.

They will also put in a pretty extensive stock of spare parts to support the equipment. They generally do a good job of supporting their products.

There are two conceivable problems that can happen. One is, if there is a national emergency, the supply of spare parts could be in trouble. But where a real problem occurs, a lot of times they will use metric fasteners. A mechanic will be working on a piece of equipment, and he will drop a nut or a bolt; then you can't go to the local mill supply house and buy a nut or a bolt to replace that, so they'll have to go back to the manufacturer or someone will have to go back to Europe and fly it over. It's in the small pieces like that where you can get in to a bit of difficulty.

The same thing has happened to us with American-built cars today. There are a lot of metric components in American-built cars, so if you're fixing some of these things yourself—I'm not advocating for or against it, but if you drop some of these nuts or bolts, you're not going to be able to replace them as easily as you would have been able to in the past. That's what's happening; the world is coming to that.

Mrs. BENTLEY. Thank you for yielding, Mr. Chairman.

Mr. OBERSTAR. I appreciate the gentlewoman's line of questioning.

In 1985, the Corps studied domestic hydraulic turbine and hydro generator production. It determined that domestic repair capability was needed, but that the Corps would not procure enough turbines and generators to support maintenance of repair base facilities in the U.S. That report recommended that the U.S. adopt a policy for all Federal agencies that procure hydraulic turbines and generators, supporting a domestic repair base.

Are you familiar with that study, and that conclusion and recommendation? What would you recommend doing, and what's your assessment of why the Army rejected that recommendation?

Mr. THORESEN. I'm familiar with that study. The recommendation, I believe, was based on the fact that the industry in the United States is being depleted. As I indicated earlier, we're down to just one supplier—that's ourselves—that has the capability, really, to develop, engineer, rehabilitate, and upgrade turbine systems. We do have that capability in York, Pennsylvania. We're maintaining it; in fact, we're in the process of investing $15 million in that facility.

But in order to remain in that position we need to have some assurance that we're going to get that kind of business from the agencies that run hydraulic turbines, at least some assurance that we're going to have a fair competitive situation in pursuing that business. It's one of the reasons we want to see the 50 percent evaluation factor remain in place, because that will apply to major repairs and major replacements as well as to new equipment.

Mr. OBERSTAR. But will there be a significant requirement for repair and replacement components?

Mr. THORESEN. Absolutely, yes. Much of the hydraulic turbine equipment that is in operation in this country has been in operation for a long time, up to 50 years. Hydraulic turbine equipment typically has a long life and will run for 40, 50, 60 years. It can be replaced or repaired and continue to operate and operate well. It can also be upgraded to bring it up to modern day standards in terms of efficiency, with relatively minimal expense compared to investing in new equipment.

So yes, all that potential is there.

Mr. OBERSTAR. What will happen if the Department of the Army or the Corps abandons policies that encourage maintenance of the U.S. industrial base? What will happen when we have to repair or replace those parts and we don't have a domestic manufacturer to do so?

Mr. THORESEN. We'll simply have to rely on overseas suppliers.

Mr. OBERSTAR. Well, won't that involve substantially higher costs of maintenance or replacement of parts?

Mr. THORESEN. You would have to expect that to be the case if the overseas foreign suppliers know that they control the market in this country. You know, the competitive situation in that case works both ways. Foreign competition tends to keep us honest in our pricing; by the same token, as a domestic supplier, we tend to keep them honest.

Mr. OBERSTAR. If you follow Mr. Hoeflein's example earlier, of metric versus U.S. measurement systems, and a foreign manufacturer is the only one left, they're going to come in with a metric system to replace something that's been produced in the U.S., and the resulting costs will be greater because you'll have to replace a larger component.

Mr. THORESEN. To an extent you're going to have higher costs because of that kind of thing, although—for example, because we are the only supplier left in the country we will take on the maintenance or upgrading of a hydraulic turbine, no matter who supplied it originally. We have the engineering capability to do that.

Mr. OBERSTAR. What is meant in your testimony when you say: "South Korean firms will feel encouraged to bid on future Corps projects because of the limited experience qualification that the Corps is permitted to use"?

Mr. THORESEN. That, again, goes back to the comment I made earlier, that I feel that the procurement process and the end product are less in the hands of the engineers than they are in the hands of the procurement officers within the agency. The engineers are no longer allowed to write prequalification requirements for the bidders as they used to be able to, to say that you've got to have five years' experience in this kind of equipment, that you have to have a certain number of items in the field operating satisfactorily. That type of language is now considered to be prejudicial to those trying, perhaps, to get into business, or a small business, or some other organization; therefore the engineers are no longer able to control the end product. It's very easy for someone with limited experience to bid to the Corps of Engineers and be accepted as a supplier.

Mr. OBERSTAR. I will conclude momentarily, but are there significant South Korean projects on which U.S. industry is especially interested in bidding?

Mr. THORESEN. Yes.

Mr. OBERSTAR. Have you been successful in any of those bids?

Mr. THORESEN. To an extent.

Mr. OBERSTAR. To an extent.

Mr. Hoeflein, you're nodding your head.

Mr. HOEFLEIN. We've been successful not in the public works area, but in the utility area, both for fossil power plants and nuclear power plants, in the petroleum industry, in the chemical industry. But that's starting to change. As Mr. Thoresen was saying, the Koreans are developing their own infrastructure now, and consequently a lot of the type of equipment that was furnished in the past they now build themselves, and they are very much desirous of introducing that equipment into the United States as well.

But prior to—well, even on the next one, on Korean Nuclear 11 and 12, I'm sure there will be a lot of U.S. equipment furnished. The two previous nuclear units went to the French, of course, but the U.S. has had a very good history of supplying nuclear power plants to Korea.

Mr. OBERSTAR. But that's beginning to change as they develop their own capability in South Korea?

Mr. HOEFLEIN. Yes.

Mr. OBERSTAR. And then they will use that technical expertise and focus it on the United States?

Mr. HOEFLEIN. And other countries as well, not just us.

Mr. OBERSTAR. Other countries, sure.

Mr. **Hoeflein**. But I think the localization requirements on Nuclear 11 and 12 are probably on the order of 60 or 70 percent now.

Mr. **Oberstar**. I'd like to ask the same question with respect to Japan. Are there significant projects on which U.S. industries have bid in Japan and been successful?

Mr. **Hoeflein**. For our class of equipment, if you go back into the 1960's there was a lot of pumping equipment sold by the United States pumping industry into Japan. I would say that the last piece of equipment that we furnished to Tokyo Electric, we furnished some nuclear feed pumps, and that would have been in 1976 or 1977.

Mr. **Oberstar**. Why have there not been successful bids since that time?

Mr. **Hoeflein**. Well, again, the Japanese, as they developed their own capability—their standards, by the way, are very rigorous. If you try to sell equipment of our type to the Japanese they will make it impossible for you to sell it. You can bid it if you want, but——

Mr. **Oberstar**. Yes.

Mr. Thoresen?

Mr. **Thoresen**. Our experience has been exactly the same as Mr. Hoeflein's. We were able to sell hydraulic turbines into Japan until about 1961, at which point they developed their own technology. From that point on we were absolutely excluded from the market in spite of all overtures that we made from time to time to enter that market.

Mr. **Oberstar**. I find your response very interesting, and will relate an anecdote about a company in my district, Reach-All, that makes an articulated arm crane.

Reach-All bid on the Japanese National Telephone Company's procurement of articulated arm cranes—"cherry pickers," we call them. Their bid document followed exactly the IFB sent out by the Japanese. It was returned to them saying there was insufficient detail and insufficient response to specifications. They redid it. The first one was 300 pages; the second was about a 400-page document. It was rejected the second time by the Japanese for minor deviations, but nonetheless rejected, saying "You didn't meet our bid. Re-do it." This time they sent back nearly 500 pages of document. The Japanese telegraphed back, "Your bid arrived too late."

Some months later, the U.S. Marine Corps on Taiwan accepted bids only from the Japanese; they refused to accept a bid from Reach-All—for an articulated arm crane. So the Japanese wouldn't buy American, but neither would the U.S. Marine Corps, for totally different reasons.

I cite that as an example that relates to your experience. I think it's important for the Department of the Army and the Corps of Engineers to understand these discriminatory practices that are used against American firms who try their best to compete in an international marketplace that is slanted against U.S. interests. And while there may be an occasional breakthrough and an occasional success, as foreign governments and foreign countries develop an expertise they tend to close off their market to protect that fledgling industry until it is able to compete, and then they subsidize it for purposes of international competition.

I want to thank the panel for their participation and their frank and straightforward response and illumination of several very, very important points. We will maintain our vigilance over these issues and look forward to hearing from you further in the future when you find discriminatory practices and failure by Government agencies to carry out the Buy America Act.

Thank you very much.

[The prepared statements of Messrs. Hoeflein, Thoresen, and Kling follow:]

INGERSOLL-RAND

Pump Group Headquarters
Ingersoll-Rand Company
942 Memorial Parkway
Phillipsburg, NJ 08865

DRAFT

April 28, 1988

Ingersoll-Rand Company manufactures pumps at its Phillipsburg, N.J. facility which is located in Warren County. This facility employs approximately 1,000 people who live in New Jersey and Pennsylvania. Total payroll in 1987 was $42,000,000 and social security withheld was $3,000,000 which was matched with $3,000,000 paid by Ingersoll-Rand.

In recent years the Comapny has been able to receive Corps of Engineers Contracts, but not Bureau of Reclamation. The equipment purchased by the Bureau of Reclamation is not subject to the 50% evaluation factor otherwise it is the same class and scope of equipment.

It is not possible to predict the future impact of a change in the DFARS in our plant as we do not have any long term forecast of civil projects from the Corps of Engineers. Additionally, as the projects have been let on a competitive basis there is no guarantee of our receiving any contracts. Suffice it to point out that if the DFARS are amended there will be an impact on the U.S. pump industry.

At the present time this class of equipment is manufactured in several countries that have lower labor costs than the U.S. and often large balance of payment surpluses with the USA, a partial list is:

1) India
2) South Korea
3) Taiwan
4) Japan
5) Italy
6) Peoples Republic of China

It is our recommendation that the DFARS be continued with the 50% evaluation factor.

Hans H. Hoeflein
Vice President
Pump Group

INGERSOLL-RAND

Pump Group Headquarters

Ingersoll-Rand Company
942 Memorial Parkway
Phillipsburg, NJ 08865

May 23, 1988

The Honorable James L. Oberstar
Chairman, Sub-Committee on
Investigations and Oversight
Committee on Public Works & Transportation
U.S. House of Representatives
Room 2165
Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman:

Thanks again for allowing me to testify at your Sub-Committee hearing last Tuesday. As requested, I am enclosing a copy of the executive summary of the anti-dumping petition by the Torrington Company, a wholly owned subsidiary of Ingersoll-Rand. This petition has to do with dumping by various nations of anti-friction bearings. As we discussed, bearings are vital to U.S. defense needs both for the military requirements and the industrial support requirements.

Ingersoll-Rand is one of the major supplier of pumps for our nuclear submarines. At the present time there is only one U.S. supplier, the Barden Company, of super quiet bearings for these pumps. For may years we could only get the bearings from NTN, a Japanese supplier. You also asked about a reference on a Bureau of Reclamation loss to a foreign supplier. One such loss was the "Pacheco" project where Toshiba of Japan was low bid at $5,944,543. A Corps of Engineers loss was Department of the Army, Huntsville Division, Corps of Engineers Ref: DACA 87-84-B-0056 to Thermomeccanica of Italy.

Please let me know if you need any more information or if I can help the Committee in any way.

Very truly yours,

Hans H. Hoeflein

Hans H. Hoeflein
Vice President
Pump Group

C2: W/O Enclosure
    R. Littlefield - WGB
    C. Harwood - Torrington
    S. Sandy
    D. DePompei - Boston

Enclosure:

March 31, 1988

ANTIDUMPING AND COUNTERVAILING DUTY PETITION

ANTIFRICTION BEARINGS AND PARTS

Subject: Petition Requesting the Imposition of Antidumping Duties on Imports of All Bearings Other Than Tapered (Including Ball, Roller, Needle, Spherical Plain and Housed Bearing Units) and Parts Thereof, Finished or Unfinished, from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; and Requesting the Imposition of Countervailing Duties on Imports of the Same Merchandise from Singapore and Thailand.

Introduction. This petition is submitted by The Torrington Company, 59 Field Street, Torrington, Connecticut 06790, a subsidiary of Ingersoll-Rand Company; on behalf of the domestic industry producing antifriction bearings (other than tapered roller bearings). It is the denouement of the continuing material injury and threat thereof being inflicted upon and confronting the industry by a convergence of increasing volume, unfairly traded imports which have been and are being sold in the United States at less than their fair value within the meaning of section 731 of the Tariff Act of 1930, as amended by Title I of the Trade Agreements Act of 1979, and Title VI of the Trade and Tariff Act of 1984 and/or being subsidized within the meaning of sections 303 and 701 of the Tariff Act of 1930, as amended. As Singapore and Thailand are not signatories to the Subsidies Code and are not otherwise deemed countries under the Agreement, no injury test is required with regard to their imports under section 303.

The material injury and threat thereof referred to above which impels this petition has been noted with concern in authoritative, recent government studies. Antifriction bearings are essential to the national security, and imports by injuring the domestic industry have injured the defense mobilization base. The Joint Logistics Commanders Bearing Study, 18 June 1986, found that -

> "Ball and roller bearings are used throughout the commercial sector in diverse applications such as commercial aircraft, machine tools, farming equipment, mining equipment, computers, ground transportation vehicles, nuclear power plants, and steel mills. The importance of the maintenance of our national defense through strong industry cannot be over

emphasized. The security of the US would be diminished if the domestic bearing market was unable to supply the bearings needed to keep equipment and industry operating during a national emergency. Many commercial bearings are components of machinery that are used to manufacture parts and equipment for the military. These bearings must be considered just as critical as the final military product. A viable domestic commercial bearing industry supports a strong defense bearing capability and is essential to our overall defense posture."

"Superprecision bearings are essential components of all major systems, and without them, the military capabilities of the United States would be substantially reduced. Their production requires specialized manufacturing equipment, specialty materials, and a highly skilled workforce. These domestic capabilities would take several years and a large capital investment to reestablish if they were lost. It is of the utmost importance that the US have and maintain a domestic source for each category of superprecision bearing, including sources for the specialty steels and other components parts used in production."

"* * * The military consumes 60 to 70 percent of the dollar value of the total production of superprecision bearings and between 40 and 45 percent of the superprecision units. The remaining 80 percent of military bearing consumption is composed of precision and commercial/commodity grade bearings. The materials, equipment, and labor needed to produce commercial/commodity grade bearings do not present the same engineering problems associated with superprecision bearing grades. However, many of the precision bearings used in helicopters, tanks, ships, fixed winged aircraft, and accessory applications do present some of the same engineering and manufacturing problems encountered in producing the higher precision, or superprecision bearings."

"The overall strength and competitiveness of the US bearing industry has been declining over the past few years. Major changes have taken place that are having a dramatic long term affect on the industry. Numerous takeovers and consolidations are symptomatic of these changes. * * *. Another change is the increasing but steady erosion of the US market to imports. From 1978 to 1984 imports increased their share of the market from 23.8 percent to 38.2 percent. Although 1985 data is not complete, it is suspected import penetration now exceeds 40 percent. This projection is based on the growth of absolute imports by 14 percent from 1984 to 1985."

"Many firms predict further decline in competitiveness and continued erosion of domestic markets by imports from countries such as Japan, Singapore, Thailand, China, and South Korea. All of the firms noted that the Japanese price their bearings as low as is necessary to 'buy' a US market share. These tactics are considered unfair trade practices. Surveyed firms pointed out that the Japanese, with strong financial backing, are able to sustain low prices for 'years', or until the market is theirs. In this way they maintain employment and high production levels at home. In addition, Romania, Hungary, and Poland are willing to sell bearings at distress prices to get needed hard currency."

"Analysis of the data collected from the bearing companies indicates a dramatic decline in the commodity (non-superprecision) segment of their business due mainly to an increasing foreign presence in the US market. * * *. Between 1981 and 1985 unit shipments fell 32 percent in the size range 0-32 mm commodity ball bearings and 20 percent for sizes over 30 mm. * * *."

"The roller bearing segment experienced extremely intense foreign competition. US firms cut prices (by 40 percent in the case of over 2 inch roller bearings) between 1981 and 1985 in a failing effort to maintain market share. * * *."

"The stability of the commodity sector of the bearing industry has deteriorated to the point where it now sits upon a precipice ready to collapse. If nothing is done by the Federal Government to reduce or eliminate the growing import share of the domestic market, the industry will almost certainly withdraw from more and more markets and jeopardize the maintenance of a defense capability."

"Foreign bearing companies are continuing to make inroads into the low value, high volume market, which has weakened the overall domestic bearing industry. This segment of the bearing market is where the major portion of company profits are centered. Without it, companies are unable to make

> the required capital investments in modernization and product research to remain competitive."
>
> "Cheaper imports have been capturing the large volume, low technology/low cost larger order lots, forcing domestic producers into high cost smaller lots. The bearing companies all confirmed this trend, reporting that they are being driven to what they refer to as niches in the bearing market. The industry is very capital intensive, which makes it sensitive to low volume production. Smaller production runs reduce efficiency and lengthen investment paybacks, raising the cost of bearings produced. Historically, the US bearing industry has been based on long production runs and high volume production. Since they have lost most of their share of the high volume market, the remaining low volume, small lot/niche type market is not suitable for most of their equipment and plant facilities. Using equipment that is more suitable for high volume manufacture on batch production runs is inefficient and costly, making the industry less competitive against foreign companies. As an indicator of how much the imports are penetrating the larger lot orders, one company representative noted that 65 percent of unit imports comprise 20 percent of the part numbers."
>
> "It is apparent that the US share of the commercial bearing market will continue to decline as foreign bearings increasingly penetrate the domestic market. The current trend is for an increasing use of foreign bearings in DOD weapon systems for cost, leadtime and performance reasons. The OEMs indicate they will continue to qualify and use more foreign bearings in their newly designed systems. This includes superprecision bearings for critical military applications. Therefore, the increasing dependence of DOD weapon systems on foreign produced bearings will cause an erosion of the US bearing industry resulting in an overall weakening of the US industrial base."

This report had been preceded by the Commerce Department study, "A Competitive Assessment of the U.S. Ball and Roller Bearings Industry," February 1985. That report found that "Imports extensively and materially affect the ball bearings segment of the U.S. market and are becoming a major factor in the roller bearings sector." Further, "From the viewpoint of the

United States' ball and roller bearing industry, the world market consists of four different areas: (1) the United States which is an open market; (2) Japan which imports only by license and permits limited competition with Japanese-made bearings; (3) The Soviet Bloc industries that are government-owned and controlled and market entry closed except for licensed imports on a 'need' basis; and (4) other countries which vary from 'open' to restrictively protectionist, excluding all bearing types produced domestically."

The International Trade Commission's section 332 investigation of the U.S. Ball and Roller Bearing Industry, USITC Publication 1797, January 1986, reported that "in recent years, the U.S. bearing industry has experienced increased foreign competition both in the United States and other markets. The Commission reported that U.S. bearing purchasers indicated that "among other factors, price was a major consideration in deciding upon a bearing supplier." It compared the prices of domestic and imported bearings in the U.S. market and concluded that "imported bearings are lower in price than U.S.-produced bearings." The Commission calculated the value of direct and indirect imports of bearings during the period 1978-1985 at $6.14 billion. On a value basis, from a share of domestic shipments of 22% during 1978-83, import penetration of bearings in the United States jumped 6 percentage points to 28% in 1984-85. This increase represented some $123 million in lost domestic production and a loss of 2,198 jobs.

Segments of the antifriction bearing industry are striving earnestly to cope with the unfair foreign competition which is undermining the strength of the industry and imperiling the nation's defense mobilization base. The Commission found that the tapered roller bearing industry is materially injured by the dumping of tapered roller bearings from Hungary, the People's Republic of China, Romania, Italy, Yugoslavia and Japan. USITC Publications 1983 (June 1987), 1999 (August 1987) and 2020 (September 1987). The Anti-Friction Bearing Manufacturers Association has petitioned the Department of Commerce under section 232 of the Trade Expansion Act of 1962 for the imposition of quotas on imports of antifriction bearings, ranging from zero for certain superprecison bearings to approximately 34% of consumption in the commodity ball bearing sector. Petition, July 17, 1987. Should the President respond to that investigation by imposing quotas, it would still leave the domestic market for antifriction bearings other than tapered in a state of disruption by widespread and massive underselling of domestic by less than fair value or subsidized imports from the countries whose bearings are the subject of this petition. Without the correction of price depression and suppression caused by dumping and subsidization, the domestic industry cannot be fully restored to a condition of profitability sufficient to enable it to achieve the restructuring, modernization and technology advances required for its survival and protection of the defense mobilization base. The injurious unfair price competition of foreign suppliers of bearings which characterized the tapered roller bearing segment of the antifriction bearing market and resulted in the Commission's affirmative determinations cited above exist in comparable tragic measure in the remainder of the bearing market. The petitioners on behalf of the industry producing ball and roller bearings other than tapered now come forward to request the U.S. Government to act promptly and resolutely to correct the injurious unfair competition from imports of those bearings.

Accordingly, The Torrington Company, a domestic producer of the subject antifriction bearings, hereby petitions the U.S. Department of Commerce, International Trade Administration, and the U.S. International Trade Commission, to initiate antidumping duty investigations of all antifriction bearings (other than tapered roller bearings) imported from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom and to initiate countervailing duty investigation of all antifriction bearings (other than tapered roller bearings) imported from Singapore and Thailand.

Pursuant to the Tariff Act, the petitioner presents in this petition all information responsive to the regulations and the statute reasonably available to them in support of their allegations that a class or kind of foreign merchandise, antifriction bearings (other than tapered roller bearings), imported from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, are being or are likely to be sold in the United States at less than their fair value, that a class or kind of foreign merchandise, antifriction bearings (other than tapered roller bearings), imported from Singapore and Thailand, benefits, directly or indirectly, from subsidies upon its manufacture, production and export and that the domestic industry producing the like product is materially injured, or is threatened with material injury, by reason of imports of that merchandise, or by reason of sales, or the likelihood of sales, of that merchandise for importation into the United States within the meaning of sections 701, 705(b), 731, 735(b) and 771(7) of the Act, as amended.

2611k

VOITH

Voith Hydro, Inc.

Statement of Voith Hydro, Inc.
York, Pennsylvania
By: Robert Thoresen, Director of Government Affairs

Before the Subcommittee on Investigations and Oversight

U.S. House of Representatives Committee on Public Works and Transportation

Subject: DAR Case No. 86-144

Date: May 17, 1988

Mr. Chairman, I am Robert Thoresen, Director of Government Affairs for Voith Hydro, Inc. a designer and manufacturer of hydraulic turbines for hydro electric power generation. On behalf of Voith Hydro, Inc. I want to thank you for the opportunity to provide our comments on the proposed revision in the U.S. Army Corps of Engineers Procurement Policy.

While I would like to express our appreciation for Assistant Secretary of the Army (Civil Works) Robert W. Page's recommendation of February 18, 1988 to "take no further action at this time" on the proposed revision, it is important that U.S. industry be given this full hearing on the matter.

The 50% factor (DAR 6-104.4) which the Corps of Engineers has applied since 1964 as a penalty in evaluation of foreign bids (foreign content in excess of 50%) has been a positive factor for the United States hydraulic turbine manufacturing business. While international economic conditions have diminished the importance of this factor to U.S. Suppliers in competition with manufacturers from the European nations and Japan, its significance is growing rapidly relative to manufacturers from a number of developing nations which are encouraging industrialization.

Procurement Record

The Corps of Engineers, since the implementation of this evaluation factor, has purchased hydraulic turbines on the basis of domestic bids, event though the bidders have frequently been foreign firms utilizing domestic content. The only exception was the Libby Dam Project for which bidding was limited to North American suppliers with strict limitations on foreign content. By comparison, the U.S. Bureau of Reclamation, using the standard 6% evaluation factor during approximatley the same period of time, purchased about 85% of the hydraulic turbines for its projects on the basis of foreign bids with over 65% coming from Japan.

There has been just one hydraulic turbine project purchased by the U.S. Bureau of Reclamation and very few by the Corps of Engineers recently. While that situation is not expected to change in the near future, the evaluation factor will continue to be important to the U.S. industry because it is expected that there will be a significant requirement for repair and replacement components as well as rebuilding existing equipment to upgrade performance.

VOITH

Voith Hydro, Inc.

Balance of Trade Issues

The international economic situation which has developed over the last few years is very likely to bring about significant changes in the competitive pressures for this future Corps of Engineers business. Devaluation of the U.S. dollar relative to the currencies of our European trading partners and Japan has unquestionably increased the ability of U.S. suppliers to be competitive against suppliers from those countries. The impact of the devaluation of the dollar on relative wage rates (March 23, 1987 Wall Street Journal article, enclosed) certainly enhances the competitiveness of U.S. manufacturers.

The negative balance of trade between the United States and our trading partners continues to grow, however. Even though that trend may be expected to decelerate and possibly reverse with those countries whose currencies have been devalued relative to the dollar, other nations, whose currencies are closely tied to the dollar, are likely to become increasingly important in the U.S. trade deficit picture. South Korea, as noted in the above referenced Wall Street Journal article, has retained a strong competitive advantage in wage rates (the 1987 end of year figure for South Korea is 13%). A result, shown in the chart below, has been a dramatic acceleration in the United States' imports from South Korea far exceeding any increases in U.S. exports to South Korea. The accompanying rate of increase in the U.S./South Korea trade deficit is even more impressive.

Voith Hydro, Inc.

VOITH

United States/South Korea Trade Statistics
(U.S. Dept. of Commerce FT 990)

(U.S. $ Millions)

	1984	1985	Rate of Increase 84/85	1986	Rate of Increase 85/86	1987	Rate of Increase 86/87
U.S. Exports	5,982.7	5,956.2	(0.4%)	6,354.9	6.7%	8,098.7	27.4%
U.S. Imports	10,027.4	10,712.5	6.8%	13,497.0	26.0%	17,991.0	33.2%
Balance	(4,044.7)	(4,756.3)	17.5%	(7,142.1)	50.2%	(9,892.3)	38.5%

Four Year Cumulative Trade Balance 25,835.4.

International Competition

During the past several years in internationally competitive situations, suppliers from developing nations, particularly those from South Korea, have been used as suppliers for castings, forgings and steel plate for major hydraulic turbine components by manufacturers worldwide because of their low costs. In many cases, these components are supplied finish machined to design drawings. While South Korea, for example, does not yet have a full capability (R&D, engineering and manufacturing) hydraulic turbine supplier, the result of placing subcontracts for major components with South Korean firms has been a rapid and significant growth in experience in the manufacturing sector for hydraulic turbines. With the very limited experience qualification the Corps of Engineers is permitted to use, South Korean firms, among others, will undoubtedly feel encouraged to bid on future COE projects, especially solicitations for repair and rehabilitation of existing equipment. It is also likely because of the low South Korean labor costs and their manufacturing experience, that Japanese and other foreign suppliers will bid their own designs but with major South Korean content.

In either case, a situation of continuing unfair competition for U.S. hydraulic turbine manufacturers as well as their domestic subcontractors emerges. There is no question that the international competitive climate is such that retention of the 50% evaluation factor by the Corps of Engineers is a matter of critical importance to maintaining a strong competitive industry in this country.

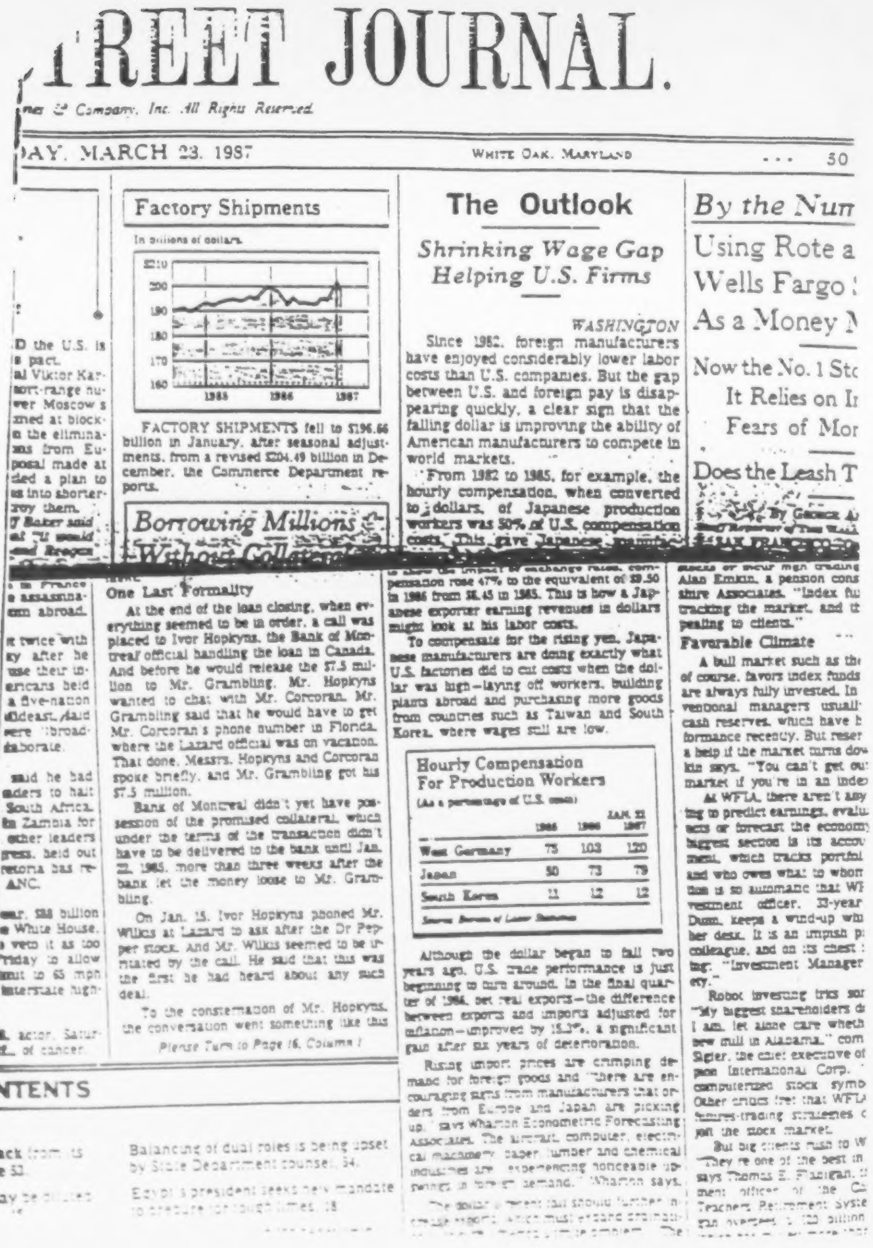
Unilateral Trade Concessions

In addition, it seems that the proposed elimination of the 50% evaluation factor used by the Corps of Engineers in evaluating bids for its own domestic civil works projects is only justified on the basis of simplifying the procurement process. In our experience we have found no basis for suggesting that such simplification is required. Since the evaluation factor as applied is an existing trade restraint, particularly under circumstances as outlined above, it would seem reasonable that if it is to be eliminated and thereby benefit foreign suppliers, that some trade concession should be sought in return. It is not in the best interest of this nation's economy to unilaterally eliminate an existing trade restraint especially when we are searching desperately for ways to decrease, not increase, our record trade deficit.

Employment Impact

According to our records, Corps of Engineers' purchases over the past five years which have been awarded to U.S. suppliers (U.S. content in excess of 50%) of hydraulic turbine equipment have totalled approximately $20 million. Voith Hydro, Inc. and its predecessor company Allis-Chalmers shared in approximately half of that business. Our forecast for Corps of Engineers hydraulic turbine equipment purchases for the next five years is an estimated $30 million. If that equipment is supplied from domestic sources it could amount to an estimated 225 man years of employment in our York, Pennsylvania facility plus an additional 225 man years by suppliers and subcontractors for a total of 450 man years.

It is strongly submitted that continuing developments in the international market place accompanied by our growing trade deficit require the attention of every executive agency and demands that every available action that might have a reasonable and positive impact be taken. In this case, that means retention of the 50% evaluation factor for the Corps of Engineers. Your assistance in this matter will be very much appreciated.



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TREET JOURNAL.

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DAY, MARCH 23, 1987 WHITE OAK, MARYLAND ... 30

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Factory Shipments

In billions of dollars

FACTORY SHIPMENTS fell to $196.66 billion in January, after seasonal adjustments, from a revised $204.49 billion in December, the Commerce Department reports.

Borrowing Millions & Without Coll [illegible]

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One Last Formality

At the end of the loan closing, when everything seemed to be in order, a call was placed to Ivor Hopkyns, the Bank of Montreal official handling the loan in Canada. And before he would release the $7.5 million to Mr. Grambling, Mr. Hopkyns wanted to chat with Mr. Corcoran. Mr. Grambling said that he would have to get Mr. Corcoran's phone number in Florida, where the Lazard official was on vacation. That done, Messrs. Hopkyns and Corcoran spoke briefly, and Mr. Grambling got his $7.5 million.

Bank of Montreal didn't yet have possession of the promised collateral, which under the terms of the transaction didn't have to be delivered to the bank until Jan. 22, 1985, more than three weeks after the bank let the money loose to Mr. Grambling.

On Jan. 15, Ivor Hopkyns phoned Mr. Wilkis at Lazard to ask after the Dr Pepper stock. And Mr. Wilkis seemed to be irritated by the call. He said that this was the first he had heard about any such deal.

To the consternation of Mr. Hopkyns, the conversation went something like this

Please Turn to Page 16, Column 1

The Outlook

Shrinking Wage Gap Helping U.S. Firms

WASHINGTON

Since 1982, foreign manufacturers have enjoyed considerably lower labor costs than U.S. companies. But the gap between U.S. and foreign pay is disappearing quickly, a clear sign that the falling dollar is improving the ability of American manufacturers to compete in world markets.

From 1982 to 1985, for example, the hourly compensation, when converted to dollars, of Japanese production workers was 50% of U.S. compensation costs. This gave Japanese manufac- [illegible] to show the impact of exchange rates, compensation rose 47% to the equivalent of $9.50 in 1986 from $6.45 in 1985. This is how a Japanese exporter earning revenues in dollars might look at his labor costs.

To compensate for the rising yen, Japanese manufacturers are doing exactly what U.S. factories did to cut costs when the dollar was high—laying off workers, building plants abroad and purchasing more goods from countries such as Taiwan and South Korea, where wages still are low.

Hourly Compensation For Production Workers

(As a percentage of U.S. costs)

	1985	1986	JAN. 22 1987
West Germany	75	103	120
Japan	50	73	79
South Korea	11	12	12

Source: Bureau of Labor Statistics

Although the dollar began to fall two years ago, U.S. trade performance is just beginning to turn around. In the final quarter of 1986, net real exports—the difference between exports and imports adjusted for inflation—improved by 15.3%, a significant gain after six years of deterioration.

Rising import prices are crimping demand for foreign goods and "there are encouraging signs from manufacturers that orders from Europe and Japan are picking up," says Wharton Econometric Forecasting Associates. "The aircraft, computer, electrical machinery, paper, lumber and chemical industries are experiencing noticeable upswings in foreign demand," Wharton says.

The dollar's recent fall should further increase exports, which must expand dramati- [illegible]

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By George A
Staff Reporter of The Wall
SAN FRANCISCO

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Favorable Climate

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AMERICAN GEAR MANUFACTURERS ASSOCIATION

STATEMENT

BEFORE THE

HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

presented by

THOMAS R. KLING, PRESIDENT AND CEO
PHILADELPHIA GEAR CORPORATION
King of Prussia, PA

accompanied by

STEWART R. WARD, PRESIDENT
BRAD-FOOTE GEAR WORKS, INCORPORATED
Cicero, IL

on behalf of the

AMERICAN GEAR MANUFACTURERS ASSOCIATION

May 17, 1988

1500 KING STREET, SUITE 201, ALEXANDRIA, VIRGINIA 22314 703-684-0211

My name is Thomas R. Kling. I am President and C.E.O. of Philadelphia Gear Corp. located in King of Prussia, PA. I am a member of the Board of Directors of the American Gear Manufacturers Association. I am joined this morning by Stewart R. Ward, President of Brad-Foote Gear Works, Inc., Cicero, IL and he is also a member of the AGMA Board of Directors. Today we are appearing on behalf of the domestic members of the American Gear Manufacturers Association.

The American Gear Manufacturers Association (AGMA), represents over 300 companies engaged in the design, manufacture, and application of gears and gear products and flexible couplings. Gross sales for the industry in 1987, including foreign imports was approximately $1.5 billion. Each $103,000 represents an American job. Approximately 24% of 1986 sales were to the Federal government. The vast majority of domestic manufacturers are classified as small businesses, having less than 500 employees.

The Association was founded in 1916 and has considered itself a technical organization which develops U.S. standards for gears, gear products and flexible couplings. It has also attempted to generally promote the economic well being of the industry. The Association has been certified by the American National Standards Institute (ANSI) as a certified standards body. The Association performs as the Secretariat. The Association represents the United States through ANSI in matters before the International Standards Organization relating to gears and gear products. Products produced by the gear industry have been classified by the Department of Commerce S.I.C.3566.

Our purpose here today is to present the Association's views with regard to the Proposal of the Corps of Engineers in DAR Case 86-144 to reduce the Buy America preference of 50% to 6 to 12% for equipment or supplies for civil works projects funded by civil works appropriations. In the notice of proposed rule making, the Corps incorrectly states that this proposed action will not affect small business and further that its impact is di minimus. The proposed amendment to part 225 Foreign Acquisition Section 25.105(S-75) is opposed by the Association primarily because the Amendment will further erode opportunities for the American gear manufacturers to fairly compete for Federally funded acquisitions. In addition, the Corps alleges that a principal purpose for the proposed amendment is to eliminate confusion as to applicable Buy America provisions. It has been the experience of the gear industry that there is, in fact, no confusion with regard to the applicable provisions of the Buy America Act under existing regulations.

Prior to 1980 as many as fifteen U.S gear manufacturers sought business from Corps related projects. In 1987, even though six domestic companies were pre-qualified, only three sought to bid on Corps projects. The primary reason was that experience had shown that foreign manufacturers, if their bids could be determined, were thirty to forty percent below the lowest domestic bid.

Over the last two years, the AGMA has attempted to demonstrate the importance of a technically qualified and economically healthy gear industry. The Association presented material to the Congressional Commission on Merchant Marine and Defense in July 1987. The Commission found in its Report that the domestic gear industry was one of three industries regarding which the DoD should take action to prevent further erosion of its industrial base. The Report of the Commission was published in early 1988.

The Association has also provided extensive material to the Department of the Navy relative to the negative impact of foreign sourcing on the few remaining marine gear drive manufacturers in the United States. The transfer of technology in national defense related industries such as ours is of great concern due to the TOSHIBA experience.

Last September the Association submitted testimony before The House Committee on Banking and Urban Affairs, Subcommittee on Economic Stabilization a copy of which is attached. The purpose was to demonstrate the need for a fully operational, technically knowledgeable industry in times of mobilization. AGMA estimates that some 25% of defense contracts are awarded to foreign manufacturers. The direct effect of which is not only the loss of jobs, but also the loss of taxes, and eventually gear manufacturing capacity. Frankly the development and maintenance of foreign industry at the expense of the U.S. employee and the domestic industry is deplorable.

In the late 1970s a decision by the Coast Guard and the Department of Transportation to reduce or eliminate all together the Buy America Act had a direct and adverse impact on the marine drive sector of the U.S. gear industry. Philadelphia Gear for many years successfully bid on Coast Guard marine propulsion contracts. The entire market for Coast Guard marine drives has gone foreign along with the incidental jobs, technology and investment in capital goods.

This Committee should carefully inquire of the Bureau of Reclamation, the degree to which there has been foreign domination of this market sector under the 6-10% Buy America preference. It is the Association's best estimate that penetration is to the extent of approximately 80% in Bureau of Reclamation projects. Once again, the result is the direct export of tax dollars, jobs and industrial capacity.

The U.S. gear industry is greatly concerned that the proposed change will have the same impact on the Corps of Engineers public works sector of the industry.

As the President of the United States ponders the veto of the Foreign Trade Bill, the question of the level playing field continues to crop up. Free trade seems to mean free to foreigners but extremely costly to domestic manufacturers. Our State Department negotiates on their behalf, not only MOUs and MOAs, but in their behalf with others branches of government, state and federal. U.S. gear manufacturers get no such assistance. Quite the contrary. Domestic manufacturers are most often precluded from bidding based on foreign government regulation or practice. This is true for both public works projects as well as military procurement.

Recently, Philadelphia Gear had the experience of negotiating with the Russians on a petroleum project only to be told that Philadelphia Gear could not participate due to possible technology transfer. The contract was awarded to a division of the same Flender Corp. that does business in the U.S., even with the Corps of Engineers.

We wish to stress with the Committee, that since the beginning of the recession in 1981, there has been a concerted effort on the part of foreign gear manufacturers to penetrate the U.S. gear market. This has been achieved by a methodology which, if practiced by a domestic manufacturer, could be a violation of the U.S. anti-trust laws. In many cases, predatory pricing was and continues to be a possible violation of existing Trade Laws. The pursuit of an anti-dumping case is too costly and often unsuccessful due to the lack of hard data. The foreigners have adopted the lost leader approach to market penetration at the expense of our domestic industry. It is the rule rather than the exception, that foreign gear manufacturers submit bids 30 to 50% below the lowest domestic bid.

In addition to the price differential, the European bidders purport to bid on the basis of AGMA Standards specified by the Corps of Engineers; but in many cases the products bid are not built to the AGMA Standards. It is necessary to explore briefly the difference between DIN, German National Standards, and AGMA Standards, American National Gear Standards. American standards reflect careful consideration of Anti-trust Laws and an ever present product liability exposure. AGMA Standards reflect more than sixty years of technological development and user-manufacturer experience.

Attached as a part of this testimony is an article published in Power Transmission Design magazine, in September, 1987. The article is written by the Vice President, Technical Division of AGMA, Donald R. McVittie. Don McVittie is a gear consultant and the representative to AGMA for The Gear Works of Seattle, WA. The article explains the differences between AGMA and DIN Standards. Admittedly complex, the standards are so complex that there is almost a total lack of understanding of this very important issue. In all but a very limited number of Corps District Offices, (even though each individual district office sets the specifications for gear applications in Public Works Projects), there is little understanding of the relationship between AGMA standards and DIN standards as relates to Corps of Engineers Public Works Projects.

The Europeans, when submitting bids on Corps of

Engineers Projects, in addition to bidding at prices 30 to 40% lower than domestic gear manufacturers, also propose to produce an enclosed drive gear box which, in fact, does not meet the Corps of Engineers established specifications, which require adherence to AGMA standard 420.04 governing minimum standards for enclosed drives. A physical comparison of gear drives, offered by our domestic bidders, and those of our European competition would show, by weight alone that a domestic gear box, weighing approximately 30,000 lbs. would compete with a European counterpart weighing only 11,000 lbs. A careful analysis of the European gear box would indicate that shaft sizes would be unable to meet the criteria of AGMA 420.04. In addition, similar difficulties would be realized with regard to the distinction between key strength comparisons. Stated in simple terms, DIN rated gear boxes currently furnished to the Corps of Engineers, do not comply with AGMA standards in that they lack sufficient strength and toughness to withstand overloads which occur in Corps related projects.

We would like to cite several examples:

1) The Pickwick Dam Project, a Corps-TVA Project; the successful bidder, some 40% below the price of the lowest domestic bidder, was Hansen, a Belgian corporation. Almost

immediately following installation of the gear drives, it was observed that the keys in the gear box failed. Basically, the gear boxes were too small for the application. The domestic bidders were knowledgeable about the application, calling for a 280% start-up over-load strength. The domestic manufacturer realized the necessity for greater strength.

The Corps of Engineers and the TVA, following the failures, realized the insufficiency of the Hansen gear boxes, and at an additional expense of a quarter of a million dollars, replaced the underdesigned gear drives with domestically produced gear drives in 1986.

2) In approximately 1981 the Corps, at Lock and Dam 26 Phase 1 accepted Thyssen gear boxes, which allegedly met AGMA standard 420.04. The gear drive was 50% smaller than the gear drive bid by a domestic manufacturers. The price was approximately 40% lower. After protests by the domestic supplier, the Corps of Engineers hired three independent gear consultants, each of whom determined that the Thyssen gear drive did not meet the Corps' specifications. In this instance, Thyssen was required to modify their units to meet specifications.

3) In 1988, the Corps of Engineers, on the Red River Lock and Dam Number 3 project, originally accepted a bid from a foreign

manufactuer for a gear drive weighing only 11,000 lbs. when a domestic producer given the application and the Corps of Engineer specifications designed a gear drive weighing approximately 30,000 lbs. This disagreement has not been finally resolved. However, past history would indicate that the foreign gear drive is undersized when measured in accordance with AGMA standard 420.04.

We apologize for our inability to produce more concrete examples, but our industry has extremely limited accesss to the desired data. The domestic industry is, however, of the opinion that there are currently in place, in Corps related and Bureau of Reclamation related projects, foreign produced gear drives which lack sufficient strength for the application and in addition which fail to meet AGMA standard 420.04.

When discussing level playing fields, it becomes necessary to describe some of the standard terms and conditions to which domestic manufacturers must comply in order to bid on Corps related projects. Required of domestic manufacturers are the following: compliance with EPA regulations, compliance with OSHA regulations, compliance with Equal Opportunity, Affirmative Action for Veterans and Handicapped Workers, compliance with the Walsh-Healey Public Contracts Acts and numberous other Federal statutes and regulations. Foreign manufacturers are not required to comply with U.S. law to manufacture products outside the continental limits of the United States.

Furthermore, since federal monetary policy has resulted in the devaluation of the dollar as against the yen and the deutschmark as well as other European currencies, there has been less than a 10% increase, if that, in the price of foreign produced gears and gear products.

The proposed amendment to DFARS 225.105 (S-75) is opposed by the American Gear Manufacturers Association, particularly because, while the stated purpose is to eliminate confusion where none exists, the Corps of Engineers and the Defense Acquisition Regulatory Council proposed reduction of the Buy America evaluation factor will in fact be a major detriment to the domestic gear industry.

Additional reasons for the AGMA opposition to the proposed reduction of the Buy American evaluation factor are that it can only result in further adverse impact on the U.S. balance of payments deficit, and will not result in the Corps of Engineers obtaining quality gear products for their projects.

AGMA estimates that next year's potential gear related Corps of Engineer projects could result in 15 to 18 million dollars in business for the domestic industry. Based upon industry statistical evaluation, each $103,000 in U.S. gear manufacturing sales results in employment of one American. The loss of these contracts could result in the loss of as many as 500 jobs. Best estimates on the potential multiplier factor for Corps of Engineers Public Works Projects is 2.1 to one. Loss of business to foreign manufacturers, which already have every advantage in the U.S. market can only have a detrimental effect on the domestic industry and economy.

It is hoped that this Committee, in examining the issues surrounding this seemingly di minimus regulatory change, should require the Corps of Engineers to produce statistics with regard to Corps acquisitions of gears and gear products, their source, foreign or domestic and the number of failures which have occurred, the nature of the failures and the cost of correction.

Every effort should be made at the Corps of Engineers to level the playing field between the foreign and domestic producer of gears and gear products. In addition, the Corps should establish a central engineering facility to establish standards and specifications for products acquired in all Corps related projects.

Contrary to recent allegations, the American Gear Manufacturers have not fallen dangerously behind the technology of our foreign competitors. The industry is technically qualified, has the productive capacity and can compete with foreign competition on a level playing field. It stands ready to serve the Corps of Engineers as requested. The Corps of Engineers should be precluded from issuing regulations detrimental to American gear manufacturers.

attachments: Lowry Testimony
McVittie Article

ANALYZING GEAR STANDARDS

Make gear standards work for you by learning the benefits and limitations of two principal industry "languages"—AGMA and DIN.

DONALD R. McVITTIE Vice President, Technical Division
American Gear Manufacturers Association, Alexandria, Va.

To help evaluate gears and gear products, standards offer a common language that bridges the communications gap between manufacturer and user. Industry increasingly relies on the standards published by two groups—Deutsches Institut Fur Normung (DIN) and the American Gear Manufacturers Association (AGMA).

A third group, the International Standards Organization (ISO), has not yet become a major contributor to gear industry standards, Figure 1. To date, sixteen ISO standards covering nomenclature, tooling, and geometry are in force. Gear performance rating standards, however, remain in the draft stage at present. For general purposes, ISO and DIN are interchangeable, since most ISO drafts use DIN standards as their source documents.

By examining the scope of AGMA and DIN standards and becoming fluent in both "languages," users can capitalize on the strong points of each system. Manufacturers can, and in fact, do produce gears to any standard. For both manufacturer and purchaser, widespread use of AGMA and DIN standards clarifies the gear purchasing process. Recognizing the scope of each system changes the nature of standards from restrictive to beneficial.

Comparison factors

The first AGMA gear rating standard appeared in 1919, three years after the group was founded. This was followed by the first AGMA gear quality standard in the late 1930s. DIN gear quality standards were first introduced in 1951. Each system evolved differently, retaining its own philosophy and flavor.

DIN is a product of the joint venture between government, academia, and private industry.

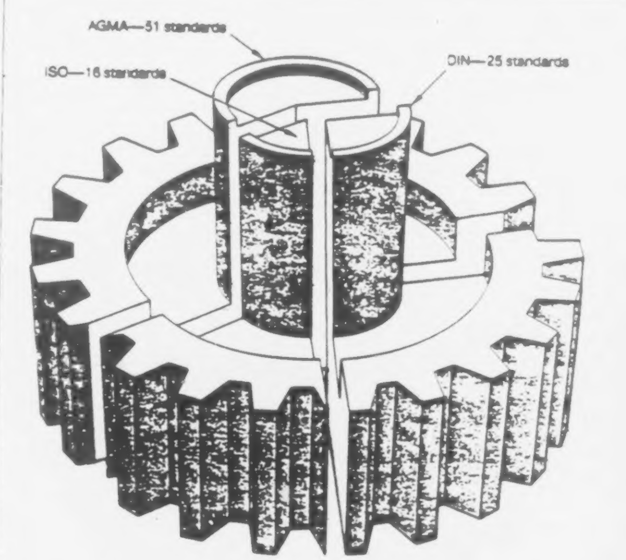

Figure 1 —Comparison of the number of gear standards currently in force by each organization.

Table 1—Comparison of allowable K-factors

Type gear	Heat treatment	Number of samples	Average allowable K-factor		K-factors
			AGMA	ISO	AGMA ÷ ISO (%)
Helical	Through hardened	8	251	195	129
Spur	Carburized hardened	8	557	578	96
Helical	Carburized hardened	5	701	840	83

Table 2—Comparison of allowable unit loads

Type gear	Heat treatment	Number of samples	Average allowable unit load (psi)		Unit loads
			AGMA	ISO	AGMA ÷ ISO (%)
Helical	Through hardened	8	7,402	11,269	66
Spur	Carburized hardened	8	8,756	12,614	70
Helical	Carburized hardened	5	10,465	17,744	59

Government and industry sources provide funding for the standards drafting and development work performed by the academic community. Academic research centers supply the theoretical and laboratory research data that forms the basis of DIN standards.

By contrast, AGMA receives funding solely from the industrial sector. Originally formed by U.S. gear manufacturers who sought to standardize their products, AGMA today encourages manufacturers and users to participate in the standards development process. Government and academia also make technical contributions, with resulting AGMA standards that are heavily application-oriented.

Other differences involving the treatment of gears and gear products exist between the two standards-writing bodies. These factors include material appraisal, quality determination, service factors, gearbox components, and thermal capacity.

Material appraisal. A major difference between AGMA and DIN standard systems lies in their method of appraising material.

In certain cases, DIN calculates lower, more conservative stress levels for through hardened material, while AGMA remains more conservative for carburized gears. This is especially evidenced by the K-factor, a measure of power density which helps to compare gearsets, Table 1. A simplified definition of K-factor is:

$$\text{K-factor} = \frac{\text{pitch line force (lb)}}{\text{volume of pinion material (cu. in.)}}$$

AGMA allows lower unit loads than DIN regardless of hardening process, Table 2. Allowable unit load relates to the bending strength of the gear material. Both standard systems derate actual bending strength. In a 1980 test published by the Japanese Society of Mechanical Engineering (JSME), bending strength capacities for different gearsets were tested, Figure 2. DIN rated capacity was higher in all cases than AGMA rated capacity, but both values were less than the capacity of the test gears (see Technical reference no. 4).

Quality numbers. Although no direct correlations exist between DIN and AGMA quality numbers, several guidelines attempt to achieve exact conversions. The "rule of 17," for example, says that DIN quality equals 17 minus AGMA quality. This generally holds for radial runout and pitch tolerances, but not for profile and lead tolerances, and neither of the scales are linear or proportional. Table 3 shows how a DIN Quality 4 gear may be comparable to an AGMA Quality 11, 12, 13, 14, or 15 gear, depending on pitch and diameter.

Quality determinations are based on tooth geometry. While geometry considerations under DIN and AGMA are similar, they are not exact duplicates, thus, the difference in quality ratings. However, for general industrial gears, the differences between AGMA and DIN methods of determining tooth geometry are often not considered significant.

Service factors. To compare the nominal catalog rating of a gearbox to the horsepower of driving machinery in a given application, AGMA suggests using a service factor. This factor adjusts the nameplate horsepower of the driving machine (usually upward) to give the gearbox horsepower rating that will deliver adequate life in the application.

AGMA's traditional service factor data base includes an overload factor that relates to the application, and an expected life component. These factors were derived from field experience and compiled into an industry consensus average.

The empirically derived service factors are now in the process of being reviewed. Rating committees have begun splitting the service factor into its two components—an application factor that deals with overloads, and a life factor. New product standards derived from AGMA 218 are being prepared. This main standard (218) has been in force for five years, and contains a method for converting service factors into application and life factors.

DIN adopted service factors similar to those in the AGMA system. Although numerically the same, they are based on a different rating system and produce different results, Table 4.

Component design. In the AGMA system, a separate standard (AGMA 260) gives specifications for bearings, bolting, key stresses, and shaft stresses in an enclosed drive unit. This ensures that all supporting members in the gearbox are consistent with the unit's rating. AGMA's criteria for components is considered conservative because it is based on the theory that a gearbox must withstand two times the rated load. Recommended component stress levels are relatively low to compensate for momentary (5 s/hr) overloads.

DIN leaves the choice of component overload factors and design criteria up to the manufacturer. As a result, two equally rated DIN gearboxes can have a different total capacity. To find out component ratings in a DIN-rated unit, one must either test the gearbox or obtain

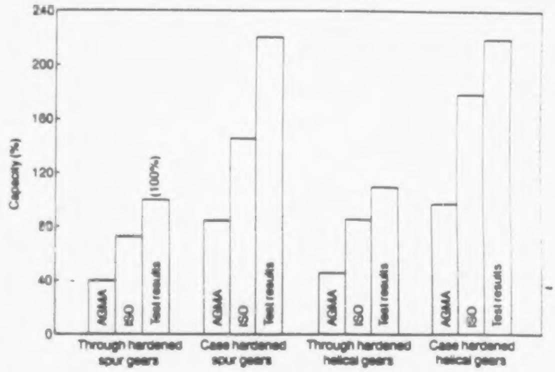

Figure 2 — Bending strength comparison published by the JSME shows that both standard systems derate actual capacity.

Table 3—Equivalent AGMA Quality numbers for DIN Quality 4 gears

Diametral pitch (in.)	Pitch diameter(in.)															
	.98	1.5	2	3	4	6	7.9	12	16	25	32	50	63	100	124	
0.5								15	15	15	15	15	15	15	15	Runout
1								15	15	15	15	15	15	15	15	
2						14	15	14	15	14	15	15	15	15	15	
2.5		13	14	13	14	13	14	14	14	14	14	14	14	14	15	
4		13	14	13	14	13	14	14	14	14	14	14	14	14	15	
8	13	13	13	13	13	13	13	13	13	13	14	13	14	13	14	
12	12	12	12	12	13	12	13	12	13	12	13	13	14	13	14	
20	12	12	12	12	12	12	12	12	12	12	13					
0.5								12	12	11	12	11	12	11	12	Pitch
1								11	11	11	11	11	11	11	11	
2								12	12	12	12	12	12	12	12	
2.5		12	12	12	12	12	12	12	13	12	12	12	12	12	12	
4		12	12	12	12	12	12	12	13	12	12	12	12	12	12	
8	12	12	13	12	13	12	12	12	13	12	12	12	13	11	12	
12	12	12	12	12	12	12	12	12	12	12	12	11	12	11	11	
20	12	12	12	12	12	12	12	12	12	11	12					
0.5								14	14	14	14	14	14	14	14	Profile
1								13	14	13	13	13	13	13	13	
2						14	14	14	14	14	14	14	14	13	14	
2.5		13	14	13	14	13	14	13	14	13	14	13	13	13	13	
4		13	14	13	14	13	14	13	14	13	14	13	13	13	13	
8	13	13	14	13	13	13	13	13	13	13	13	12	13	12	12	
12	13	13	13	13	13	13	13	13	13	12	13	12	12	12	12	
20	13	13	13	12	13	12	13	12	13	12	13					

Face width (in.)	.1 - 1	1 - 2	2 - 3	3 - 4	4 - 5
Lead quality	13	13	13	12	12

Table 4—Parallel shaft helical carburized gearbox comparison

	AGMA	DIN
Step 1	100 hp application	100 hp application (in DIN terms)
Step 2	Service factor = 2	Service factor = 2
Step 3	Gearbox = 200 hp	Gearbox = 200 hp (in DIN terms) = 160 hp (in AGMA terms)

Numerically similar service factors produce different horsepower recommendations because of an initial difference in the two rating systems.

component design information from the manufacturer.

Thermal capacity. Although the meaning never changes, there are different ways to determine thermal capacity. By definition, it is the capability of a gear unit to dissipate the heat generated internally without exceeding a normal operating temperature. Power lost internally by friction and oil turbulence (thrashing) contributes to heat generation. If this heat buildup is not dissipated, oil and seals can break down, leading to gearbox failure.

Originally, AGMA standards measured thermal capacity in still air by instrumenting gearboxes. Tests verified that heat dissipation is a function of case surface area and the temperature difference between air and gearbox.

Thermal capacity estimates vary between the two systems. While AGMA estimates are not considered conservative, DIN always rates more liberally in this area. Without special oil and seals, AGMA recommends sump temperature be limited to 180 F-200 F.

Intelligent usage

There are specific cases that benefit from using either AGMA or DIN standard systems. When you have a well-defined load where dynamometer readings have been taken, and all particulars about the application (including momentary overloads) are known, you can specify exactly what you need in a gearbox. In this instance, the DIN system would require smaller gears.

On the other hand, to help those who are not aware of the finer details of their application, the AGMA system offers guidance based on the consensus of member experience.

For example, a fan that circulates air is a well-defined load. Fans have a predictable start-up curve, with specific loads, known overloads, and heating characteristics. To specify a gearbox for a rock crushing application, where specific overloads are unknown and

ISO—The International Standards Organization

ISO was created in 1947 by 25 of the world's leading industrialized countries (as its charter states) to "facilitate the international coordination and unification of industrial standards." In the post-war environment of international trade and declining protectionism, it was ISO's intent to establish a common standards system for the global market. This goal has not yet been reached in full.

Forty years later, ISO membership includes 75 nations, 2,300 technical bodies, and 20,000 individual experts. Participation is voluntary, and usually involves those individuals and organizations that are active in the development of their own nation's industrial standards. The resulting giant international bureaucratic network is responsible for the development of standards in over 160 different product areas—one of which is gearing.

The sheer size of the organization, national sensitivities and conflicts, as well as individual marketing concerns all tend to slow the pace of ISO standards development. Each stage of the approval process requires months of coordination, with ample opportunities for voicing concerns; therefore, delays are abundant.

This is particularly apparent with the development of gearing standards under ISO's Technical Committee 60 (TC60). For example, TC60 has not yet reached an agreement on a fundamental gear rating standard. Despite repeated drafts, committee meetings, and the sincere efforts of all involved, international standards for use by gear purchasers have not materialized. A draft proposal, offered in 1984, was rejected for lack of consensus. The current ISO schedule indicates that the next draft will not be ready for review until 1988. If that draft passes the first critical stage in the approval process— review by TC60—it must then go out for general consensus. Some sources predict an approved standard around 1990.

Why is there such a problem with the ISO process in developing these crucial standards? Part of the explanation lies in the internal politics of the system. TC60 is open to any nation's participation. To date, the most active parties have been the European countries, although U.S. involvement is increasing through the American Gear Manufacturers Association.

Each country's delegation brings its own specific concerns about the market place to the standards development process. The more active a country is in the international market, the more concerned it can be about the specifics within a standard. Opportunities for disagreement abound, and standards require agreement between parties.

Frequent delay in the standards development process concerns all ISO participants. While technologies for designing and manufacturing gearing have advanced substantially within the last few years, the ISO standards process appears to be losing ground.

AGMA Standards update

In an effort to bring gearing standards up to date, the American Gear Manufacturers Association is presently converting various gear product standards, derived from AGMA 218. Instead of containing a single service factor, these proposed new standards will contain two separate factors—one for life expectation, and one for load considerations. Approval is expected within one year.

AGMA's consensus process, a very structured agenda, begins with a draft written in committee. The draft is sent out to all members of the committee, who constructively criticize the proposal. Suggested changes are then resolved, and an entire membership consensus is attempted. Individual appeals are resolved, and the standard becomes another member in the AGMA family.

often unmeasureable, users can benefit from the collective experience of previous rock crushing applications.

Specifying gear units for a new application can be done best with the benefit of a test program. If the quantity of gearboxes to be ordered justifies an extensive engineering program, it is best to conduct a test program with prototype models. In addition to testing gear teeth, components including keys, shafts, bearings, and bolts should also be tested. Common errors in testing are inaccurate load measurement and underestimation of overloads. To circumvent these problems, use strain gauges or a torquemeter to accurately assess loads.

Finally, if an engineering program is not practical for whatever reason, rely on the experience of other, similar applications by applying appropriate service factors. **PTD**

For more information on gear standards from the American Gear Manufacturers Association, ***circle 512*** *on the reader service card.*

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AMERICAN GEAR MANUFACTURERS ASSOCIATION

STATEMENT

BEFORE THE

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
SUBCOMMITTEE ON ECONOMIC STABILIZATION

presented by

THOMAS H. LOWRY, PRESIDENT
RILEY GEAR CORPORATION
North Tonawanda, NY

on behalf of the

AMERICAN GEAR MANUFACTURERS ASSOCIATION

September 29, 1987

Good morning. My name is Tom Lowry. I am president of Riley Gear Corp., located near Buffalo, N.Y., a company which employees 110 people and provides gears for the aerospace and vehicular markets of the defense industry. Today I am testifying on behalf of the members of the American Gear Manufacturers Association.

The American Gear Manufacturers Association (AGMA), represents over 300 companies engaged in the design, manufacture, and application of gears and gearing products. These companies operate in the "open" gear market: they do not manufacture gears as part of their final product, as is the case with automotive gears. For the AGMA member companies, gears are their final product, sold to users of gears for their own applications.

This industry is not a large one -- annual national market figures barely exceed $1 billion, with approximately 24% of 1986 sales to U.S. government agencies. Many defense prime contractors have annual sales that are greater than this figure, but size is not the question here. While the industry represented may seem small when compared to other industries on a dollar volume basis, this industry is crucial to our defense needs. Without functional gears, tanks don't roll, planes don't fly and ships don't move. Without gears, there would be no "Go" in "Go Navy."

I am here today because of the critical importance of the gear industry as suppliers to the defense industry. Without our components and parts~~,~~ no contractor that makes things that move can meet the defense needs of the United States.

Maintenance of the North American Industrial Base and this country's gear manufacturing capacity is essential to our defense capabilities as well as the viability of much of the manufacturing base of our country. However, until now, suppliers have been largely ignored by groups studying the preparedness question. We see this subcommittee's efforts as a major step toward recognizing that fact.

THE IMPORTANCE OF SUPPLIERS

An analysis of the application of gears and gearing products quickly indicates how crucial this industry is to our national defense. In the simplest terms, gears are used to transmit rotating power from its source to where it will be used. To effectively harness the power of a marine turbine, a simple drive shaft alone would not do the job. The speed of the turbine needs to be reduced to the number of rpms to be used by the propeller, and that speed must be variable or reversible. The same exact principle applies to jet aircraft, helicopters, tanks, jeeps, and even the xerox machines that keep the Defense Department's paper flowing.

A significant segment of the membership of AGMA is responsible for power transmission systems used in defense products. In fact, approximately 83% of AGMA's membership does business directly or indirectly with the government. We are suppliers of original component parts, as well as replacement parts for such items.

It is equally important to realize that few of the prime contractors have the ability to manufacturer gears. The equipment necessary to do the job is expensive and difficult to justify for production of the size lots that are often needed. A gear company, by supplying a number of contractors, is able to reach economies of scale that make this capitalization possible.

These same required economies of scale are being undermined by procurement of gears from foreign sources. At present, approximately 25% of all gearing used in defense applications is obtained from foreign sources. We are increasingly seeing our defense needs being made dependent on these overseas suppliers. It is ludicrous to imagine a wartime scenario in which the U.S. defense industry had to rely upon foreign manufacturers of gears for components or replacement parts. Not only might shipments from friendly countries be delayed, but shipments from suddenly unfriendly nations would certainly be curtailed, literally crippling our defense.

Despite this strategic disadvantage, there is extensive foreign sourcing of gear drives. Over two dozen major ships built within the last six years have been equipped with gear drives provided by either German or English companies. This is a major -- and a damaging -- percentage of the marine gearing purchased. Significant portions of aircraft gearing is supplied by Japanese and Northern European sources. Vehicular gearing appears from the Asian basin and Mediterranean states. By reducing the number of orders that our American shops are handling, the capacity for our industry to effectively compete on economies of scale is being significantly reduced.

The supply of original gearing components is not the only question which the Committee should consider. While foreign manufacturers may stress price and performance of original components, they are not equipped to provide full service during normal peacetime operations, much less during wartime situations. American companies have survived the recent years of intense competition in part because they are able to provide direct, reliable, timely and customized service to all of our customers, including the defense industries.

A single example from one AGMA member serves to illustrate this point. During the 1986 confrontation with Libya, the destroyer U.S.S. Iowa became inoperative because an original set of gears had finally worn out. Just as with the old saying about "for the want of a nail, the shoe was lost," the loss of this single gear set in an oil pump drive left this ship dead in the water at a critical time. Our Association's member was able to manufacture a replacement gear to specification and delivered it to the ship in less than 72 hours -- not an easy feat when the number of steps in the manufacturing process are taken into consideration. This capability for rapid response is so valuable that a special citation of this outstanding service was made to the company by the American Defense Preparedness Association. This is the type of support essential to the viability of our defense network -- support that could easily vanish if our manufacturing base in this country continues to be eroded.

CONDITIONS IN THE GEAR INDUSTRY

We are not a large industry, and neither are our companies large. As I have already stated, our annual sales total only slightly over $1 billion. With the size of our total national market, you can easily see that almost every one of these companies fits the description of a small business -- the average AGMA member company has less than 100 employees. There are only two or three gear companies in the United States today with more than 1,000 employees, and only half a dozen of our members employ more than 500 workers. In fact, 85% of this country's gear companies have fewer than 75 employees.

These numbers should not mislead you. One AGMA member with only 26 employees is the manufacturer of high precision key components of the B1 bomber.

The gear industry is a capital intensive industry. Even with the small number of employees, the average gear company has about $11 million in gross fixed assets and spends over $600,000 per year in capital expenditures. A crucial factor affecting the ability of the gear industry to compete in the marketplace is the extraordinarily high cost of capital equipment. The average replacement cost of a single gear generating machine is $400-500,000, and can on occasion reach as high as $5 million. The entire series of manufacturing steps required to make a gear may require as many as five or six such pieces of equipment. The industry is dependent upon machinery of narrow application, specifically high technology, which is critical to our ability to produce precision gearing products necessary for both the general market and for national security.

The intense need for capital in this industry places us in a dangerous position. With current competition, both domestic and foreign, profit margins are extremely narrow. But simultaneously we must replace outdated equipment to remain competitive. In 1986, a reported 7.9% of our annual sales were invested in new capital equipment, but that still falls short of the industry needs. While we can handle the needs of today, I have serious concerns about what our abilities will be ten or fifteen years from now.

Recent economic conditions have been strenuous for many industries and the gear industry is no different. Leveraged Buy-Outs (or LBOs), mergers, acquisitions, division sales, massive reductions in work forces or just plain closings are still very common to our industry. Soft markets and high debt load have led to the closing of many gear companies. According to the most recent Census of Manufacturing, the number of gear companies has been declining at a rate of almost 2 percent per year. While major portions of the American economy have fully recovered from the Recession of 1982-83, this is not the case for the gear industry. Industry-wide employment has dropped 29.4% since 1980. Consolidated figures for current gearing shipments are still 20.3% below the figures recorded in 1981. Considering the state of the economy, the inefficient outmoded companies have been forced out of business. The companies left are the strong healthy ones, able to adapt to the new global market realities.

We are small businesses with heavy investments in capital equipment, without the flexibility to be able to absorb the cost of increasingly risky investments in sophisticated equipment for a limited, perhaps unstable market. We are also an endangered species; the constant shrinking of our industrial base has resulted in less than one dozen domestic companies that can compete today for contracts for marine products.

Market pressures are sufficiently rigorous to test this industry, without additional problems provided by the federal government. Each of you have heard all too often about the cumbersome and prohibitive paperwork involved in government contracts -- an inordinately large burden for a small manufacturer. But much more damaging is that great investments of capital are often required to compete for contracts, with little or no assurance of a consistent future market. It is one thing for a small company to compete with other domestic suppliers on an equal basis in the marine gear market today. But it is totally unreasonable to expect us to compete with foreign firms with enormous resources and an ability to market their products to the Department of Defense at prices substantially below market prices.

THE PROBLEMS OF FOREIGN COMPETITION

There has been an alarming tendency by federal agencies to patronize foreign manufacturers or allow contractors to utilize foreign manufacturers in U.S. government contracting. There appears to be several reasons for this tendency--ranging from perception of value to diplomatic agreements--all of which contribute ultimately to the erosion of our domestic gear manufacturing capabilities.

Our current estimates are that some 25% of defense contracts for gears are awarded to foreign manufacturers, helping to build foreign capabilities while contributing to the erosion of ours. We have seen repeated examples of critical defense components being manufactured off shore -- parts for the Army's Hummer general purpose vehicle and Abrahms tank, parts for the fighters and helicopters, and parts for ships for the Coast Guard, Merchant Marine and most notably for the Department of the Navy. In one case, the Department of Transportation even issued specifications for a Coast Guard cutter's gearing using German design specifications. Unfortunately, this is not a two way street: U.S. manufacturers are regularly prohibited from bidding on foreign defense contracts.

One of the sources of this problem is the diplomatic practice of entering into Memoranda of Understanding or Agreement (MOUs and MOAs), frequently used to justify awarding contracts to foreign manufacturers. The result is still the same: strengthening the capabilities of foreign nations while eroding our own capabilities.

Perhaps one reason for patronage of European sources for gears can be traced to the legacy of the Marshall Plan, the mindset that we still need to help their small, struggling and damaged economies. Of course, we all know that today that situation no longer exists, that in fact certain sectors of their economies are often stronger than the counterparts in the U.S. economy. An example that is particularly poignant is the German gear industry -- official German reports indicate their industry is almost twice the size of that in the U.S.

There is another dangerous idea that German technology is better -- what one might call the BMW/Mercedes mentality. In fact, the Department of the Navy trains its gear procurement officers at the University of Munich. When U.S. gear procurement officials spend two years being indoctrinated at a foreign university, it is not surprising that an "America is not capable" mentality would result.

Even more illustrative of my point, we heard recently that a group of naval gear procurement officers are scheduled to take a tour of European gear manufacturing plants, but "did not have funding" to visit any of our plants in the U.S.

Another difficulty faced by the American gear manufacturer is the price discrepancy. It is interesting to note that, although the value of the American dollar has dropped substantially in the last two years, the cost of gears made available by foreign manufacturers has remained the same. We find it difficult to believe that these companies have been able to reduce their production costs 40% in the past two year period, yet that is exactly what would be required to maintain their prices over that time. There is no question that there is selling below cost to penetrate the defense market.

We all fully appreciate the concern of the Defense Department and its contractors in trying to save increasingly scarce funds, but recent examples seem to indicate that too many foreign firms are using the DoD's exemption from commercial trade laws as a way to participate in predatory pricing.

One example I can mention involves another AGMA member, a midwestern gear manufacturer employing almost 300 workers. The company owners recently took the risk of spending $5 million on one piece of sophisticated machinery to produce hardened and ground marine gears on the verbal assurance by the Department of the Navy that there would indeed be a constant demand by DoD for the product from domestic suppliers. After winning one subcontract for a marine gear box, the company lost the second to a foreign company, which apparently bid less than the cost of the materials in the US. The specifics are as follows:

An important DoD contract involved the TAO tanker program, a twenty vessel multi-year procurement of fleet oilers by the U.S. Military Sealift Command. The first seven vessels were contracted, five to Avondale Shipyards and two to Penn Shipbuilding Company. Two U.S. manufactured gear drives of 16,500 HP were incorporated into each hull. The third contract went again to Avondale. Avondale purchased the propulsion drives for its second contract from a West German company. Penn elected to "buy" the engineering package from Avondale along with all of the purchase requisitions, and also purchased propulsion gear drives from the same foreign source.

Available information indicates that the foreign gear drives incorporated into these Navy contracts were purchased at substantially below the U.S. manufactured price. There were several reasons why this German firm was able to underbid U.S. suppliers. Foreign manufacturers are frequently subsidized in their labor and development costs -- as is particularly the case in Germany. Their after tax costs for capital investments are almost half of the U.S. counterpart expenses, and differences in product liability and a myriad of marketplace factors also strongly favor many of these foreign competitors. Even when we take all of these factors into consideration the price of these foreign drives strongly suggests that pricing was below the real market costs of materials and that the pricing was designed for no other purpose than to seize the contract.

The rationale for this may be explained by a purported comment made by a representative of the same company: "Our objective is to bury the U.S. marine gear industry." Since this company is a subsidiary of one of the largest conglomerates in the world, one theory is that their excess steel capacity, which could not be shipped to the U.S. because of the current Voluntary Restraint Agreements (VRAs) on trade, was instead "hidden" in the reduced costs of the gear drives. Similarly, another European firm has instructed its sales force not to lose "any contracts on the basis of price."

With procurement officers indoctrinated that "German Gears are Better," and offered a staggering savings on one set of gears, no wonder U.S. firms find it difficult to compete. Certain foreign manufacturers with their enormous reserves and less expensive capital can afford to absorb a loss in procuring valuable contracts. These losses will often be offset through increased market penetration or even resale of critical advanced technology.

NATIONAL SECURITY

The Toshiba case of recent months has further reinforced our concern about the transfer of critical technology to unfriendly nations. The reason I raise this example now is that for the same TAO gear drive orders I've just mentioned, there is that potential. The design for the TAO drives was substantially the same as used in the DDG-51 destroyers - a sonar silent drive. As part of the TAO order, design and manufacturing specifications were given to this subcontractor, which simultaneously (according to their own annual report) is a major contractor with the Russian Navy. While we can not go so far as to accuse this company of transferring the technology of these gear drives to their other customers, the obvious potential exists.

Perhaps the most dangerous result of awarding contracts for critical components to foreign nations is the possibility that the technology, particularly sensitive technology, will be resold to nations unfriendly to the U.S. We know that sensitive Department of Defense contracts have gone to European companies who also contract with the Soviet military. It would seem to be prudent to restrict such contracts to U.S. manufacturers; one only need to look as far as the Toshiba case to learn that lesson. And that is probably not an isolated incident, since the Norwegian manufacturer which was involved with Toshiba in selling sensitive technology to the Soviets has additional government contracts. According to our information, Kongsberg A/S Vapenfabrikk also manufactures parts for the F16 fighter, Pratt & Whitney 4000 Jet Engines, ASN Pentagon missiles, and the GE/SNECMA Airbus 320.

The question of national security, however, is much broader than just the issue of technology transfer. The basic capability of our national defense industrial base is also at the heart of our concerns, and some recent history points to the reason why.

At the outset of World War II, it became obvious that the United States would become fully involved in a multi-theatre war. The logistics required to support such an effort necessitated a massive defense buildup in this country. Horror stories abound about how we struggled to produce gears. It was several years into the war before we were able to meet the needs of our war effort.

While the U.S. did not have either the number or size of gear manufacturing machines required to support defense needs, the machine tool manufacturing capability did exist to produce, in time, the required production machinery. Today, with the severe damage that has been done to the machine tool industry of this country, we may well have a case where history cannot repeat itself. With today's military technologies, we will probably not have the luxury of time and distance to allow us to repeat that experience.

CRITICAL SURGE CAPACITY

The art of manufacturing gears requires not only expensive machinery, but also highly skilled workers...people who should be considered craftsmen. Over 10 years of education and training is required for the average individual in our skilled work force. The industry is characterized by generally low volume, highly specialized products, which require this unique and highly educated labor. Even as the industry utilizes the latest in manufacturing technologies, this manpower requirement cannot be significantly altered. Even on the latest Computer Numerically Controlled equipment, we find that an average of seven years of experience in the gear industry is required for a worker to be able to produce aircraft quality gearing.

The availability of qualified skilled workers in the gear industry is in general decline, as fewer new entries into the work force find their career objectives on the shop floor. Simultaneously, with the global economic factors I discussed earlier, gear companies are finding it increasingly difficult to keep their skilled workers employed.

The problem is not limited to blue collar workers. There is an increasing problem finding qualified design and manufacturing engineers for the gear industry. As research projects, training and other engineering functions are sent off shore, we continue to limit our ability to build a supply of key people who will be able to handle these key functions in the future. And that future may be as near as five years away, as more of our experienced engineers, trained in the years immediately following World War II, reach retirement age. While foreign nations invest heavily in the education of people for their future, the U.S. government does not do the same here. At the same time, it compounds the problem by sending the research and development projects overseas.

Additionally, there is a common misconception about the production capacity of this industry. The gear industry is currently operating at 65% of its capacity, which does not mean that full production or the "surge capacity" of these gear companies could be achieved by simply raising the demand for our products. Most of this "over capacity" is in reality 30 to 40 year old, outdated machinery, incapable of producing quality gearing in quantities sufficient to meet short term demands. Rebuilding these increasingly outdated machines is economically and technically impractical and would require extensive time. The necessary expansion of the work force would also require enormous lead time, as noted. Finally, without the ongoing use of the technology of making gears, that ability will atrophy. While many companies report that they could double their output in 12 months, a twofold increase would fall considerably short of the need for gear spare parts on weapon systems. According to the DOD/DLA, "conservative estimates based on a sampling of industrial planned items indicate a minimum of a threefold increase would be required to support our national defense."

One need only look to the forging industry for an indication of where the gear industry may be headed. For major precision forgings, there is only one U.S. supplier left. If the gear industry should be allowed to erode to the same extent, the effects could be substantial and even more apparent long before the end of the next decade. The obvious result is that our defense preparedness would indeed suffer.

RECOMMENDATIONS

To ensure that domestic gear manufacturing capabilities are preserved to meet the needs of America's defense, I offer several ideas to you today which we at AGMA believe would be beneficial.

It would be a significant step forward if federal agencies, including the Department of Defense and Department of Transportation, would be required to abide by existing trade laws which apply to commercial markets. Currently, an American gear manufacturer has no recourse if he knows, or suspects, that a foreign manufacturer has obtained a DoD contract through unscrupulous means, as he would if it was a commercial trade case. I should also stress that the current proposed trade legislation does not sufficiently address this problem, offering toothless tigers included to give lip service in addressing the problem. Strong enforcement of trade laws within the Defense Procurement Process, in accordance with the GATT (Generalized Agreement on Trade and Tariffs) would be a major step toward eliminating inequities in the current procurement process.

Perhaps the most important step you could take would be to encourage the use of domestic suppliers, particularly for critical components for defense projects. Adopting a variation of the Buy America clauses for sensitive projects is essential, to ensure that the capability to manufacture sensitive gearing remains onshore. The current practice of requiring a percentage of a project to be American-made is theoretically useful, although it rarely applies to the gearing component of a weapon system. The requirement of fifty percent is usually easily met without including critical components like gearing, which may constitute less than 2 percent of the cost of the entire contract. Even the inclusion of gears on DoD's list of critical components does not seem to overcome this tendency. I would like to take that concept of Buy America one step further, and suggest that certain components of such projects, gears among them, be specified as critical and required to meet their own individual Buy America requirements.

Also, before a government contract is awarded to a foreign company, an economic impact statement should be required by the contracting agency. Such a statement would invariably prove that, in addition to U.S. industrial erosion and technology transfer, significant economic losses occur to the U.S.. Just one example is the loss tax revenue to the U.S. government. The objective of the impact analysis would be to evaluate the life time cost of the gearing system, versus initial purchase price, and to determine the magnitude of the ripple effect of the federal dollars spent. Obviously, the price tag on the item is not the bottom line. Some experts estimate that this ripple effect can add as much as 50 percent to the value of an American made product, or even more.

In measuring the cost of the government "doing business", it may also be worth the effort to analyze the costs incurred in imposing federal accounting procedures on small businesses, like gear companies. For contracts of less that $100,000, it is impractical to require a small company to incur the costs of restructuring their entire accounting system to accommodate what may be only 20 percent of their business. Additionally, if a federal audit determines that for 50 sets of gears, costing $350 each, there was an excess profit (using their definition) amounting to $10 per set, what has it cost the federal government to recoup that $500? If true efficiency and cost savings are to be the goal, an exemption for small contracts would make consummate sense.

These proposals are not radical. They only extend the universally accepted rules of fairness and general business practices to apply to defense procurement areas which have somehow been left untouched. If such actions are not taken, and if the importance of gears in defense needs continues to be ignored, we will not be able to meet the needs of the defense establishment in a time of crisis. True preparedness requires that our modest recommendations be adopted.

Thank you for this opportunity to present the concerns and view of our industry.

Mr. **Oberstar**. Our final witness for today's hearing is Dr. G. Edward Dickey, Deputy for Program Planning, Review and Evaluation, Office of the Assistant Secretary of the Army, accompanied by Mr. John Conklin, Mr. David Chambers, and Mr. Mark Charlton.

Gentlemen, we welcome you to our hearing. We appreciate the fact that you have sat patiently through the morning testimony, listening to the comments of others, and have been very, very attentive. We welcome you to the hearing.

[Witnesses sworn.]

Mr. **Oberstar**. We have your prepared statement which we welcome you to deliver at this time.

TESTIMONY OF G. EDWARD DICKEY, DEPUTY FOR PROGRAM PLANNING, REVIEW AND EVALUATION, OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS, DEPARTMENT OF THE ARMY, ACCOMPANIED BY JOHN CONKLIN, DEPUTY FOR PROCUREMENT POLICY, OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY FOR RESEARCH, DEVELOPMENT AND ACQUISITION; DAVID CHAMBERS, ENGINEERING AND CONSTRUCTION DIRECTORATE, U.S. ARMY CORPS OF ENGINEERS; AND MARK CHARLTON, OFFICE OF THE CHIEF OF ENGINEERS

Mr. **Dickey**. Thank you very much, Mr. Chairman. It's a pleasure to be here again.

My name is Edward Dickey; I am the Deputy for Program Planning, Review and Evaluation in the Office of the Assistant Secretary of the Army for Civil Works. At your request, I am accompanied by Mr. John Conklin, the Deputy for Procurement Policy in the Office of the Assistant Secretary of the Army for Research, Development and Acquisition, and Mr. David Chambers from the Engineering and Construction Directorate in Headquarters, U.S. Army Corps of Engineers. Also in accordance with your request, I am accompanied by Mr. Mark Charlton, who is representing the Chief of Engineers.

I am pleased to appear before you today. I will discuss the implementation of the Buy American program by the Army Corps of Engineers and the 50 percent balance of payments evaluation requirement of the Department of Defense as it relates to the Civil Works program.

The Buy American Act, enacted on March 3, 1933, is designed to accord preferential treatment to domestic producers and manufacturers in the case of purchases of certain articles, materials, and supplies by Federal agencies, as well as by construction contractors with such agencies. The Buy American program is an important feature of the Army Corps of Engineers way of doing business. The Corps of Engineers has extensive experience in administering this program, with over 400,000 civil works procurement actions every year. All Corps contracts carry the required Buy American Act clauses. Normal contract administration procedures preclude violation of the Act. The Corps administration of the program within its jurisdiction has an excellent track record with few challenges to its application.

The 50 percent balance of payments evaluation factor was added by the Department of Defense to its Buy American program as a temporary measure in response to balance of trade concerns. It is not required by the Buy American Act or its implementing Executive Order. The factor applies only to offers involving end products of a non-qualifying country, that is, a country that is not a defense cooperation country, a country without a Foreign Military Sales Offset Agreement with the United States, or a NATO country which does not have a specific agreement with the United States insofar as its goods are concerned. It applies only to direct purchases by the Army Corps of Engineers and does not apply to construction equipment or material acquired by Civil Works construction contractors. Stringent Buy American mandates apply to purchases by Federal construction contractors.

In 1984, the Office of the Assistant Secretary of the Army for Research, Development and Acquisition, as a result of an error made in a field contracting office which gained high-level visibility, proposed that the 50 percent balance of payments evaluation factor, as applied to Army Corps of Engineers Civil Works projects, be rescinded to simplify the procurement process and assure consistent and equitable treatment. The Buy American program, with all of its facets and features, would still apply to Army Corps of Engineers procurements. The proposed rule change would also make the Civil Works procurements similar to those of non-defense agencies.

At about the same time the rule change was initially proposed, Congress and the Administration were developing a new charter for the water resources program. This effort culminated in the enactment—as you know, Mr. Chairman—of the Water Resources Development Act of 1986, Public Law 99-662. This act shifts the focus from what was largely a Federal program to a joint venture partnership with non-Federal project sponsors who share in the costs of project implementation. It underscores the importance of the Army Corps of Engineers providing as cost-efficient projects as possible. The proposed rule change could, in specific circumstances, yield a lower cost for a project. Therefore, the Assistant Secretary of the Army for Civil Works supported the initiative to change the rule.

On April 16, 1987, the Defense Acquisition Regulatory Council placed an announcement for public comment in the Federal Register proposing a change to the 50 percent balance of payments evaluation factor rule as applied to Army Corps of Engineers Civil Works projects. The comment period of 60 days was extended an additional 60 days, until August 15, 1987, in response to public and Congressional interest in the proposal.

In further response to comments on the proposed rule change, we attempted to quantify its impact. In Fiscal Year 1987, the Army Corps of Engineers had over 400,000 procurement actions totaling approximately $1.8 billion. Of this, only $18 million was for purchase of supplies that could possibly be affected by the proposed rule change. There were a large number of industries represented, and it was felt that the impact of the proposed rule change would be insignificant. For example, in Fiscal Year 1987, 200,000 tons of steel was acquired for Army Corps of Engineers construction projects, but less than 2,000 tons was by direct purchase potentially impacted by the proposed rule change. This was considered an insignificant amount for an industry which annually produces 90 million tons.

While the economic burden on an industry-wide basis is insignificant, we recognize that there may be a specific adverse impact upon an individual firm if the rule were changed.

In January of this year, after giving consideration to all the issues, comments, and expressions of concern, the Department of the Army recommended that the rule be left intact. On May 4, 1988, the Defense Acquisition Regulatory Council decided to withdraw the proposal and leave the current regulations unchanged. A notice to this effect will be published in the Federal Register.

The proposed rule change regarding the 50 percent balance of payments evaluation factor is now a closed issue from our perspective. We are not going to propose to change the rule.

As a concluding comment, Mr. Chairman, I would note that the process for changing procurement regulations works well. In this specific case, there are arguments for both keeping and changing the 50 percent evaluation factor rule. After a period of public comment, and after all of the issues and concerns that were identified were considered, a decision was made not to proceed with the rule revision.

Mr. Chairman, this completes my statement. We are prepared to respond to any questions that you or members of the Subcommittee might have.

Thank you.

Mr. Oberstar. Thank you, Mr. Dickey. I think I can speak for members of the committee, that we applaud the outcome and the results of the rule making and the decision making process.

What we now want to pursue is how this rule making occurred, in the first place and the circumstances under which it occurred. I think you have heard a good deal of the testimony given and the concerns expressed by the industry regarding our industrial base. We want to let that settle with you for a bit and we'll come back to that.

On the merits, I think the Department came to the right conclusion, but the initial decision on the issue itself was wrong.

First of all, where did the impetus arise for the notice of proposed rulemaking? Did that come from within? Your testimony on page 3 refers to "an error made in a field contracting office which gained high-level visibility."

Did prime contractors initiate this action with the Corps of Engineers or with the Department? Or was it generated from within?

Mr. Dickey. Mr. Chairman, it was generated from within, and I'll ask my colleague here, Mr. Conklin, from the Office of the Assistant Secretary for Research, Development and Acquisition, which had the lead on this item, to give you a little more of the background on that.

Mr. Oberstar. Please do.

Mr. Conklin. Mr. Chairman, in specific, my recollection is that there was an incident involving the direct purchase by a Corps district of a foreign-manufactured forklift truck or tractor, the so-called "Komatsu" tractor, on a very small dollar value competitive procurement where the total difference between the domestic and the foreign price was under $3,000, as I recall. In that particular case, the district, or the Corps contracting officer on the procurement, trying to interpret the procurement regulation in existence at that time—that, by the way, was before the Federal Acquisition Regulation was in effect, so they were working under a Defense Acquisition Regulation—interpreted that this was for a Civil Works purpose and therefore the 50 percent factor should not be applied in that particular case.

He did not apply the 50 percent factor. When that was brought to the attention of Army headquarters by a variety of means—it gained local notoriety; for example, I think that was the time when Caterpillar Tractor was experiencing some severe difficulties. It resulted in an article in the local press. It resulted in letters to Congress——

Mr. OBERSTAR. By "local press" you mean Peoria, Illinois?

Mr. CONKLIN. Yes, that's correct, and it was therefore brought to our attention.

The procurement was reviewed. It normally would not have been reviewed at headquarters; it was a very small dollar value procurement, but it was reviewed by Headquarters, Corps of Engineers, and they found at that time that the 50 percent factor should have been applied in that particular case under the procurement regulation in effect.

It didn't stop there. The Office of the Secretary of Defense also got involved. They responded to a number of inquiries from the Hill. They spoke to Army leadership and suggested that perhaps we should come up with some kind of mechanism to assure that such a mistake would not happen in the future. It was at that time that I got involved in the procurement policy arena and was asked to develop such a change to the DOD acquisition regulation supplement.

It was purely an attempt to clarify the regulation so that the contracting officer in the Corps would not have to have a judgment call that could, in fact, be called the wrong way. To that end, we posited or proposed to the Corps and the Office of the Assistant Secretary of the Army for Civil Works two alternatives. In essence, we would either apply the 50 percent Department of Defense balance of payments evaluation factor rule across the board for any direct purchases by the Corps of Engineers for Civil Works, or in the alternative, that we would not apply the 50 percent factor in the same circumstances—that is, direct buys by the Corps in support of Civil Works projects.

As you have heard Dr. Dickey testify, looking at the issue at that time we felt that the most reasonable and equitable way to go in terms of the way the rest of the Federal Government was operating was that we not apply the 50 percent Department of Defense factor in Civil Works buys. That was really where the proposed rule came from.

Mr. OBERSTAR. Is this process of decisionmaking as you have described it, about application of the 50 percent factor, based on Executive Order rather than on law?

Mr. CONKLIN. Actually, my understanding is that the 50 percent factor is really at a level below the Executive Order. Although it is authorized by Executive Order, it's not addressed per se in the Executive Order. It was the creation of the Department of Defense.

Mr. **Oberstar**. Yes, it was issued by Secretary McNamara, as your or previous testimony described, based on concern over the balance of payments at that time. I think 1962 was roughly when it was issued, and the Department then reasoned it was a temporary condition and the program not intended to be permanent.

I must say that what puzzles me is that the concern raised by the Member of Congress and by other Members of Congress outside that particular district, was that you are not doing enough to defend American interests and buy American products as the Buy America law wants, and the Department came to the opposite conclusion—"Well, we'll simply get rid of this requirement."

Mr. **Conklin**. That does seem on its face to be a little strange, and perhaps today we would agree that that was a little strange. At the time, however, I think we looked at it a little differently.

Mr. **Oberstar**. I appreciate your candor.

Mr. **Conklin**. I, for one, had no preference one way or another in terms of what procurement rule we should follow. I tried to look at the situation as it was being applied throughout the Federal Government. I tried to look at exactly what kinds of things we were buying. In point of fact, recognizing that the balance of payments evaluation factor was a creation of the Department of Defense relating to defense materiel and purchases, and recognizing that the Civil Works appropriation is not, per se, a Department of Defense appropriation, we felt that if we were going to be buying on the same basis as other civilian agencies who would be applying a 6 or 12 or 10 percent factor, that this would be the most reasonable way for us to go.

Mr. **Dickey**. Mr. Chairman?

Mr. **Oberstar**. Well, I appreciate that. It's important to have that thought process expressed, because the conclusion, that the Executive Order should be rescinded "to simplify the procurement process," should itself be rescinded. The result would be to simplify it for our foreign competition, not for our domestic industry. And I hope you sensed that as the testimony unfolded prior to your participation today.

Mr. Dickey?

Mr. **Dickey**. Mr. Chairman, I might just amplify a little bit about the background, when the Assistant Secretary for Civil Works was asked, he looked at it from the perspective of—and I'm not saying that we had a notion of the small impact that this had—here we are, getting a new cost-sharing arrangement; we have very limited funds; the idea is, "Here's a proposal which someone proposes in the interests of simplicity, but from the Civil Works policy perspective, it is something which will allow our limited dollars to go a little further." For example, in the context of an inland navigation project, as you know, we fund half of them out of the trust fund. The trust fund is limited compared to all the things we'd like to do. Anything that we see that can make that trust fund go a little further is a good idea.

So it's a two-sided story. The focus of the earlier testimony this morning has been on the impact on American manufacturing. We were looking at it from the point of view of the users of our water projects. For example, the people who move on the inland waterways who are, of course, very concerned that we make a modernization effort, particularly in the Ohio Basin, to maintain our ability to move those products cheaply and without delay.

So I'm just saying, there are two sides to this. We focused on the other side, our "customer side," if you will, the clients using the inland water projects and the other water projects, which is essentially a domestic orientation, of course.

Mr. OBERSTAR. Yes. And the problem with that reasoning is that it is not inclusive. It does not include the other factors present, such as those illustrated in the following example. For a bridge between Duluth and Superior, built with Federal aid, the center arch span was 10,000 tons of a total amount of 100,000 tons of steel to be used in that bridge. And Japanese steel companies bid in because they wanted to be part of that project. They saw big business for Japan, not only there but elsewhere. The State agency that was doing the bids said, "Well, we can get more for our money by buying the Japanese steel." But steel is made in Wisconsin, and the iron ore for this steel is produced in Minnesota. There isn't a dime of Japanese tax dollars going into the Federal Aid Highway System in the United States and there isn't a dime of Japanese money going into our Social Security trust fund or into the Federal Government retirement fund for those engineers who designed that bridge. And there isn't a dime of Japanese excise tax dollars going into that highway trust fund.

When the U.S. first tried to bid in Japan, we were shut out of the market. Maybe we're getting a little bit more for that million dollars less that they were able to bid into that project. But when I confronted the Minister and the Economic Counselor of the Japanese Embassy with the fact that they had bid in—that is, they had bid an uneconomical price—they as much as admitted it, as far as face-saving would allow them to go, and later said that if the project were re-bid there would be no Japanese steel bid on it. They control, from a central point, how their industries operate in the international marketplace.

It was a graphic example to me—in effect, a take-over attempt—in a major steel contracting project.

So our foreign competition knows the vulnerability of the open market in the United States, and they play on our short-term bottom line approach to financing projects.

I also noted with interest your reasoning process about cost sharing on the bottom of page 3: You know, cost sharing on Federal projects is not a new idea. The Federal Aid highway program, which for many years was a 50/50 Federal/non-Federal cost share, is now 70/30, and on the Interstate it's 90/10. There are local dollars involved. And on the Sewage Treatment Construction Grant Program there is cost sharing; it was 75/25 and is now 50/50. The Economic Development Administration grant program for public works facilities is a 50/50 matching program. We could go over a number of programs where there is cost sharing. Those local dollars are American dollars, too; they represent American industries. They'd like to see those jobs retained in the United States, too.

So I'd like you to keep that thought process in mind as you consider the future of this program.

The Chair recognizes the gentleman from Pennsylvania.

Mr. CLINGER. Thank you very much, Mr. Chairman.

Thank you, Dr. Dickey, and gentlemen, for appearing before us today and helping us as we conclude our series of hearings on the Buy American Act and its implementation.

I was interested in one statement, Doctor. You indicated that at the time that the proposed rule was promulgated there was a conclusion that it would not really have any serious impact because it was de minimis in terms of the direct purchases. But at the same time, you said that you felt that the rule change would result in significant cost savings to the Corps.

Mr. DICKEY. Yes. I would clarify that the notion of the savings was an a priori conclusion without the benefit of any analysis. The analysis came only later when there was the reaction. People said, this is terrible; it has all this impact; and so it was only at that time that we went out and attempted to quantify it, okay?

I guess we were as surprised as perhaps you are today in terms of seeing its quantitative significance of this. As best we can discern, it is certainly di minimus. And certainly, looking back now, it wouldn't have any impact on the cost of projects——

Mr. CLINGER. If it had really resulted in great savings——

Mr. DICKEY. Right.

Mr. CLINGER [continuing]. Or make your dollars go much further?

Mr. DICKEY. Exactly, it's not going to help at all.

Mr. CLINGER. So that fact is really what entered into the decision to drop the rule?

Mr. DICKEY. That's exactly right.

Mr. CLINGER. Mr. Conklin, apparently earlier in an interview with subcommittee staff you mentioned that in your opinion you were not required to publish the notice of the proposed rule change. In your opinion, what kind of an impact would a proposed rule have to have to warrant a decision that it must be published? In other words, how did you reach the conclusion that you would publish this rule?

Mr. CONKLIN. I don't recall that I specifically said that. My recommendation, in fact, to the DAR Council was that they publish the change as a proposed rule.

Mr. CLINGER. Okay, but it was a discretionary opinion because of the fact that you were not changing a rule but merely changing an interdepartmental decision?

Mr. CONKLIN. I think the Federal Register notice itself states that we feel that the proposed rule change, while obviously having an effect on an industry who may be proposing or bidding against direct procurements, lacked significance in the fact that so few direct procurements for materiel were carried out by the Corps in support of Civil Works construction projects. By and large, nearly all construction materiel, equipment, etc., is provided—as a general rule—by the construction contractor himself. In other words, they would go out and subcontract for these things. Only in a rare case would we be dealing with direct purchase on a supply contract by the Corps or anyone else in the Army for materiel in support of a Civil Works project.

To further minimize that, we were only talking about the category of those end products that would come from non-qualifying countries. Again, further narrowing—regardless of how large or small that universe is, it was further narrowing the scope of the impact of the rule change.

That was my feeling in terms of who we were really impacting out there. I did feel, and I believe the proposed rule stated, that it was my understanding at the time that the kinds of things we were talking about were some of the big ticket items, for example hydro turbine for and dams, etc., that small businesses would not generally have been involved in. In point of fact, we didn't really have a good feel from the Corps of exactly what kinds of things they did buy on a direct purchase basis in support of Civil Works until much later.

Mr. CLINGER. Well, it is true, and we've heard, that there are relatively few direct purchases by the Corps. But on the other hand, we have also heard today that there is a fairly small universe of businesses that are directly affected, and that they could be very adversely affected.

Mr. CONKLIN. Of course, we soon found that out.

Mr. CLINGER. So I gather then in your consideration subsequent to that you have taken into account the impact the change would have on that small universe as well as the indirect or ripple effect it would have on their suppliers?

Mr. CONKLIN. Well, I would certainly say that Dr. Dickey's office and the Corps, as well as our office, took those into consideration.

Again, from my perspective, the driver was, do we need something to clarify the procurement rules to make sure that we don't have a contracting officer make a mistake in the future?

I came to the conclusion down the road that, in point of fact, we could have just clarified—or perhaps we should have just clarified to those people—exactly what their status was, that they were employees of the Department of Defense, and that they were going to be applying the DOD 50 percent factor. In other words, we perhaps could have clarified the regulation just within the Army. That's essentially what we have achieved at this time.

Mr. CLINGER. The theme that kind of runs through this whole hearing and in a wide variety of other hearings is that we have seen a shrinkage of our industrial base, particularly the shrinkage of the defense industrial base. Congresswoman Bentley has discussed her concerns in this area.

Do these type of things enter into your consideration to change rules or regulations? We heard earlier today that there is only one domestic supplier of sheet piling, and that there used to be four or five. In my own personal experience I have seen area after area in which there are dwindling numbers of suppliers to the Department of Defense and greater and greater reliance on foreign suppliers.

Did those kinds of concerns and considerations enter into your determination on the policy?

Mr. CONKLIN. To be honest, that really did not enter into this particular case at all in my opinion. Obviously, that does come up on a lot of other decisions; not so much programmatically across the board, but on a case by case basis. I think in earlier testimony it was brought out that the Department of Defense is trying to take some action right now on the bearing industry in particular. We're trying to require that U.S. or Canadian bearings be provided over a three-year period in our contracts. I would say that's more the normal Department of Defense type contracts that we're talking about there.

This particular issue was really something sort of in the shadows between two worlds, if you will. It wasn't really clear-cut, to be honest with you, in terms of Civil Works. We had a regulation that said,

> Corps of Engineers, if you're buying a tractor for Department of State for a civil project, you will only use the normal 6 or 12 percent Buy American evaluation factors; but if you have responsibility for that project and you are therefore buying it for your own account under a Civil Works project, you will use the DOD factor.

That seemed a little strange when we were talking about Civil Works, which was not a Defense appropriation. Really, it was those kinds of things. It was not the issue about protecting the mobilization base, which really has to be looked at on an industry-by-industry basis.

Mr. OBERSTAR. Would the gentleman yield at that point?

Mr. CLINGER. Yes.

Mr. OBERSTAR. It strikes me that it makes no difference to the American industry and the American workers who are affected by the procurement whether the Corps of Engineers is buying it for themselves or whether a construction company is buying it. Whether it's bought directly or indirectly, the impact is the same: negative and devastating.

I thank the gentleman.

Mr. CLINGER. Since you feel that there is some confusion as to which factor to apply at any given instance, do you intend to issue any clarification of these requirements?

Mr. CONKLIN. My understanding is that an improper interpretation has not been made again since 1984, and that the clarification has been made within the Corps of Engineers.

Mr. CLINGER. Doctor Dickey, you indicated that you are going to publish the proposed rules withdrawal in the Federal Register?

Mr. DICKEY. Yes, but that will just say that we're not going to change the rule.

Mr. CLINGER. Okay. So you don't feel the need for any additional clarification as to how and when the rules apply?

Mr. CONKLIN. The Federal Register notice will merely be a "close the loop" announcement that we are not changing the rule.

Mr. CLINGER. Another industry concern raised earlier today was the use of steel sheet piling for cofferdams on Corps construction projects, specifically the temporary/permanent use dichotomy. Can you give us the rationale for allowing that kind of a distinction? Do you encourage the use of foreign steel in the construction of cofferdams?

Mr. DICKEY. The situation with regard to the use of the kind of steel that one uses for a cofferdam comes up in a different context. It's not the 50 percent factor issue which has come to light at Gallipolis where, as perhaps a departure from past experience, the provision of the steel for the cofferdam was made one of the bid items. Instead of the Government providing it, the contractor himself would provide it.

Mr. CLINGER. And he removes it when it is no longer needed?

Mr. DICKEY. He removes it; that's right. The steel is a temporary materiel while the project is being built, and then it's taken out.

Mr. CLINGER. And in the case of the Gallipolis project that steel would be removed?

Mr. DICKEY. Yes, it would be removed and resold for some other use or scrap.

The issue here is that once materiel becomes an item for the contractor to supply, it becomes subject to the Buy American Act. In other words, it's not falling under the regulatory procedure here but the Buy American Act. Then the question becomes, "What does that Act require?" As you no doubt have heard, the issue there was that because it wasn't incorporated into the final work, it did not have to be American-made steel. That was just the interpretation, but it has been generally sustained by a Comptroller General opinion which I presume you all have had the benefit of. It's just an interpretation of the law, and the conclusion was that the action that was taken there was in no way inconsistent with the Buy American Act. It was consistent with the provisions of the law.

Now, why the law is the way it is is lost in history, no doubt.

Mr. CLINGER. So that—on future lock and dam projects, it would be your position that cofferdams could be constructed with imported steel piling because of the fact that it is basically a contractor-supplied item?

Mr. DICKEY. That is correct, if it is made a contractor-supplied item. If in fact it is a Corps-supplied item, which I understand has been the more typical case in the past, then it would be subject to the 50 percent evaluation factor.

So again, it's one of those things, depending how you do it—a different set of rules applies.

Mr. CLINGER. Thank you, gentlemen.

Mr. OBERSTAR. I thank the gentleman for, as usual, his thoughtful, probing questions.

Following up on the latter point, the language I read earlier from the bill we'll be considering this afternoon—the Energy and Water Appropriations bill—will treat cofferdam materials and any other temporary structure in the same manner as a permanent dam constructed by the Secretary of the Army. That will eliminate this tap dancing around the matter of what is or is not permanent; whether it does or does not qualify for Buy America?

Mr. DICKEY. Yes, it probably would solve the problem I haven't had the benefit of counsel's review of this but it would seem to me that the effect would be essentially to modify the application of the Buy American Act as it relates to this item.

Mr. OBERSTAR. Does the gentleman from Pennsylvania have something that he wanted to say a moment ago?

Mr. CLINGER. Nothing further, Mr. Chairman.

Mr. OBERSTAR. Fine. Thank you.

Does the Department of the Army feel that the Secretary of Defense retains the authority to make the determination that was made by Secretary McNamara, that there is a national interest in reducing our balance of payments deficit through a procedure such as Buy America?

Mr. **Dickey**. Well, I'm not sure how to respond, Mr. Chairman. It would seem to me that certainly, since we have the 50 percent evaluation factor in place and continue to support it, we would certainly maintain that we have the authority to do that. There is no Act of Congress or whatever that has taken the authority away from the Secretary.

Mr. **Oberstar**. Right. But since this announcement was issued as an Executive Order, or in the manner of an Executive Order by the Secretary of Defense, presumably it could be rescinded or amended by the procedure we've already been describing, a notice of proposed rulemaking. But the fact remains the same. The fact of the Secretary's action in 1962 was a perception at that time that there was an imbalance in the balance of payments. To my recollection in those days it was minimal, even accepting a smaller gross national product, a smaller DOD budget, and a smaller deficit, both real and percentage-wise. Today that deficit is in the $170 billion range. It is worse by every standard of measurement, and all the more reason for us to adhere to Buy America for the original reason that it was initiated.

Mr. **Dickey**. I wouldn't disagree with that, Mr. Chairman.

Mr. **Oberstar**. Thank you, Doctor. I appreciate that.

I want to get straight for the record the matter of qualifying countries. There are three categories of qualifying countries: NATO participants, Foreign Military Sales, Defense Cooperative countries, and a fourth category that is not necessarily qualifying, but is Sweden, which is treated as qualifying but must submit a request for each individual bid to be considered as a qualifying country.

The NATO participants, under a Memorandum of Understanding between the United States and NATO members, include Canada, the U.K., Norway, The Netherlands, Federal Republic of Germany, Italy, Portugal, Belgium, Denmark, Luxembourg, France, Spain, and Turkey. Is that your understanding?

Mr. **Dickey**. I must defer, Mr. Chairman, to my colleague, Mr. Conklin.

Mr. **Oberstar**. Mr. Conklin?

Mr. **Conklin**. I think we may have Israel on that list also, even though it is not——

Mr. **Oberstar**. Israel would fall, under the information that I have, in category three, Defense Cooperation countries, Israel and Egypt.

Mr. **Conklin**. It does. Well, actually, it fell under that and still falls under that; however, the scope of the current Memorandum of Understanding with Israel is not equivalent to the scope of an MOU with one of the NATO participating countries.

Mr. **Oberstar**. I see. I appreciate that clarification.

The second category—FMS, the offset countries—includes Australia and Switzerland. Is that correct?

Mr. **Conklin**. That's correct.

Mr. **Oberstar**. And then Sweden stands in a separate category but is treated as a NATO country, except that it must apply each time for an exception? It does not have a blanket exception?

Mr. **Conklin**. That right. It's probably closer in nature in terms of the operation of the arrangement to the FMS offset countries whereby if that country's end product would represent the lowest apparent bidder or offeror on a particular procurement, then we would process a determination—or we may process a determination—to waive the Buy American Act evaluation factor in those cases. It's not an automatic application.

Mr. OBERSTAR. Thank you.

We've had indication that elimination of the 50 percent factor would mean even more purchases from non-qualifying countries, like Japan and Korea. Is that correct? It would shift?

Mr. DICKEY. Yes. That's what we anticipate.

Mr. OBERSTAR. I think you've described adequately the "Komatsu" factor that I wanted to pursue, but it seems to me that the situation there triggered quite a national concern which remains a matter of considerable concern.

I wanted to come to a matter that I think is important in this process, and that is what appeared to be a turf conflict internally. The Chief of Engineers, at the request of the Under Secretary of the Army, responded to a series of questions and sent that information to the Under Secretary, bypassing the Acting Assistant Secretary of the Army, Mr. Doyle. Mr. Doyle then wrote the Chief of Engineers a very sternly-worded memorandum expressing disappointment that he had responded to the Under Secretary and bypassed the Assistant Secretary's office.

I think this sort of bureaucratic pique adds confusion and complexity and intrigue to the matter of administration of the Buy American Act. To whom does the Chief of Engineers report?

Mr. DICKEY. With regard to Civil Works matters?

Mr. OBERSTAR. Yes.

Mr. DICKEY. The Chief of Engineers reports to Assistant Secretary for Civil Works——

Mr. OBERSTAR. To the Assistant Secretary for Civil Works?

Mr. DICKEY [continuing]. Who is responsible for the overall direction of the Civil Works program.

I was just looking at the November 24 memorandum. It seems to me that the thrust there is not that someone was bypassed, but rather that it went beyond the question of the impact. We had a terrible time trying to extract some numbers, frankly, as to what the impacts were, given the decentralized nature of the Corps acquisition process, and over 400,000 acquisitions. We had a lot of letters, as you know, from Congressmen, and a lot of people who wanted to know what the impact was, but we were having a hard time getting that answer.

It was a question of what the impact was as opposed to what the policy should be. Certainly, we do believe very much that policy is the responsibility of the Secretary and Civil Works policy is the responsibility of the Assistant Secretary for Civil Works, and frankly, he didn't want the mixing of the two, if you will.

So to be sure there is a pique there, but it isn't a question of attempting to make sure that roles are properly defined.

You may be interested, Mr. Chairman, just as an aside, that we are in the process right now of publishing formal definitions of roles for the different levels within the Corps, starting with the districts, and continuing with the divisions, the headquarters, and the Secretary, to make clear what the respective roles are.

Mr. OBERSTAR. Establishing channels, as it were? Something that the Corps is very good at doing.

Mr. DICKEY. Yes, sir.

Let me just say that we have to recognize that the Civil Works program is unusual in the sense that the Assistant Secretary for Civil Works is concerned about the outputs of the program, if you will, the projects and so forth. On the other hand, it is part of the Defense Department and in terms of the procurement rules, how it acquires its inputs and the personnel policies and so forth, all are subject to general Department of Defense guidelines. For example, the Assistant Secretary for Research, Development and Acquisition is concerned about the rules which govern how they procure things. The Assistant Secretary for Manpower and Reserve Affairs is concerned about personnel policies, and so forth.

So, it is a little bit of a peculiar situation.

Mr. OBERSTAR. It certainly is. But it struck me, I must say very candidly, that in this whole process the Chief of Engineers, who came down on the side of Buy America, seemed to be getting a buffeting for having done so, by people whose noses were a little out of joint, I just think it's unseemly and unprofessional, and I hope that kind of thing would be eliminated in the future. We have enough serious business to do without having internal turf-fighting.

In coming back to the Congressional correspondence which this committee has received from Members on both sides of the aisle, we note again and again the phrase, "no further action at this time" with respect to the notice of proposed rulemaking. Your testimony indicates that the matter is a closed book, that there will be no further consideration of eliminating Buy America.

Mr. DICKEY. That's right, Mr. Chairman. I think it's a question of the dates of the actions.

Mr. OBERSTAR. We can respond to our colleagues, both Mr. Clinger and I, by saying that that expression was used in correspondence prior to the definitive statement of the Department of the Army?

Mr. DICKEY. That's right, Mr. Chairman.

Mr. OBERSTAR. Thank you.

I have some additional questions.

I raised a point with the gear manufacturers panel about whether they had been consulted prior to the issuance of the notice of proposed rulemaking, and they indicated they had not been consulted.

What is the process or procedure, if we can come back to that point again, on issuing notices of proposed rulemaking? Is it a matter of practice to bring industry representatives in, for those industries that would be affected by the NPRM and consult with them prior to issuance, or is it a matter of standard practice simply to issue an NPRM and then wait for the comments through the Federal Register process?

Mr. DICKEY. Let me defer to my colleague.

Mr. OBERSTAR. Mr. Conklin?

Mr. CONKLIN. Yes, Mr. Chairman. Actually, it varies depending on whether the body that is putting out the proposed rule change is aware of who the potentially impacted organizations in the public are. In this case, this was not a proposed change to the basic

Federal Acquisition Regulation, sort of the "mother document," but it was a proposed change to the Defense Supplement to the Federal Acquisition Regulation. Therefore it was being handled by the Defense Acquisition Regulatory Council.

Under the procedures that we have followed since the passage of Public Law 98-577, we generally rely very heavily on the Federal Register notice. On the other hand, if there was a change affecting a cost principle that we would use in our Government contracts, we would have passed that out to all of the industry associations with which we've done a lot of correspondence in the past. In this particular case, I don't think we really knew who the potentially impacted parties were, so we did rely very heavily on the Federal Register notice.

Mr. OBERSTAR. Well, it seems in a matter of this kind, that it makes some sense to bring the industry representatives in and have a preliminary discussion and get some reaction from them, and then go out with the NPRM.

But I don't criticize the practice. I just wanted to get that clarified for the record.

A recommendation was made by the gear manufacturers panel about the matter of a discrepancy in specifications and products, to set up a process for standardization of DIN and AGMA standards. I think you heard that testimony earlier, and where their interests lie.

Mr. Dickey, may I have your response?

Mr. DICKEY. Well, Mr. Chairman, this is certainly an area in which I have no expertise at all, and I would ask if perhaps Mr. Chambers or Mr. Charlton might want to say something in that regard.

Certainly, we would hope to have the opportunity to respond for the record on that, since it does raise a very technical issue about how we go about making these evaluations. With your permission, we would certainly give you a response to the specific points that were made.

Mr. OBERSTAR. Yes. I think this is a very important matter that has some very significant consequences and will involve some long-term commitments on the part of the Department.

I was struck by this problem of lack of standardization as I read through testimony, and read carefully the examples cited by the industry representatives of failure of some significant equipment that required additional costs. I'm sure that there are occassionally failures in American gears or products that are supplied; it happens, but when there is such a massive difference between product and companies are bidding against each other on an unequal basis, it seems to me that we ought to have some standardization process. We have precedent with the National Bureau of Standards. We have other procedures within the Federal Government by which bid specifications are standardized. GSA, for civilian procurement, has very extensive product testing and measurement processes that I am familiar with. The U.S. Postal Service does the same.

So this is not an unfamiliar territory for the Federal Government, but it is one that it seems to me merits further consideration. We welcome your response in writing unless you have something further, Mr. Chambers or Mr. Charlton, to say at this point.

[The following was received from Mr. Dickey:]

NATIONAL STANDARDS FOR EQUIPMENT

The practice of non-domestic industries manufacturing their equipment under foreign standards, for equipment specified under American standards, is not limited to steel and gears but extends as well to electrical and mechanical equipment procured by the Corps for Civil Works projects.

The Corps has had experience in verifying compatibility of manufacturer's equipment. In those instances where the equipment was manufactured under foreign standards, the manufacturer was required to present complete documentation to enable the Contracting Officer to substantiate that the equipment met the equivalent requirements of the specified American standards.

The majority of referenced standards used in Corps Civil Works procurements are industry standards developed by various committees composed of representatives from industry, contractors, utility companies, various government agencies, etc. These standards are not a product of the Corps. The task of establishing national standards, or cross references between the standards, would require enormous time and effort resulting in prohibitive cost to the Government which we feel cannot be justified.

We feel that a better approach would be to expand our existing specification requirements whereby, it would be the responsibility of the Contractor (manufacturer) to prove beyond doubt that, his equipment conforms to our specification requirements. To accomplish the aforementioned we will be issuing an Engineering Technical Letter to all field offices making it mandatory when equipment of foreign origin may be involved that all Contractors submit detailed requests for deviations for approval by the Contracting Officer.

Mr. CHAMBERS. Mr. Chairman, I might add that earlier I think there was some confusion in the Foreign Military Sales area. The government of Saudi Arabia did pay for all costs of King Khalid Military City as well as other programs that we've built there, including the salaries and the fringe benefits of the Government employees that worked in that program.

As a part of the effort for the Saudi Arabian government, as a result of products being supplied from all over the world by the most favorable cost means, the Corps of Engineers did prepare cross-references to DIN standards and American standards. But we prepared the contract plans and specifications in the English language and in English units, and if metric items were provided from European countries, we did have to come up with a way to evaluate the product.

The system breaks down, I think, when we go to Civil Works water projects because those types of construction were not being undertaken by the Saudi Arabian government, so our efforts did not go that far.

[Mr. Dickey's prepared statement follows:]

DEPARTMENT OF THE ARMY

STATEMENT

OF

DR. G. EDWARD DICKEY

DEPUTY FOR PROGRAM PLANNING, REVIEW, AND EVALUATION

OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY

(CIVIL WORKS)

BEFORE THE SUBCOMMITTEE ON INVESTIGATIONS AND OVERSIGHT

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

U.S. HOUSE OF REPRESENTATIVES

ON

ARMY CIVIL WORKS BUY AMERICAN PROGRAM

MAY 17, 1988

NOT FOR RELEASE
UNTIL RELEASED BY THE COMMITTEE
ON PUBLIC WORKS AND TRANSPORTATION

Statement of Dr. G. Edward Dickey

Deputy for Program Planning, Review, and Evaluation

Office of the Assistant Secretary of the Army

(Civil Works)

Before the Subcommittee on Investigations and Oversight

Committee on Public Works and Transportation

U.S. House of Representatives

Mr. Chairman and Members of the Subcommittee:

My name is Edward Dickey. I am Deputy for Program Planning, Review, and Evaluation in the Office of the Assistant Secretary of the Army (Civil Works). At your request, I am accompanied by Mr. John Conklin, the Deputy for Procurement Policy in the Office of the Assistant Secretary of the Army for Research, Development, and Acquisition, and Mr. David Chambers from the Engineering and Construction Directorate in Headquarters, U.S. Army Corps of Engineers. Also in accordance with your request, I am accompanied by Mr. Mark Charlton, who is representing the Chief of Engineers.

I am pleased to appear before you today. I will discuss the implementation of the Buy American program by the Army Corps of Engineers and the 50 Percent Balance of Payments evaluation requirement of the Department of Defense as it relates to the Civil Works program.

BUY AMERICAN PROGRAM

The Buy American Act, enacted on March 3, 1933, is designed to accord preferential treatment to domestic producers and manufacturers in the case of purchases of certain articles, materials, and supplies by Federal agencies as well as by construction contractors with such agencies. The Buy American program is an important feature of the Army Corps of Engineers way of doing business. The Corps of Engineers has extensive experience in administering this program with over 400,000 civil works procurement actions every year. All Corps contracts carry the required Buy American Act clauses. Normal contract administration practices preclude violation of the Act. The Corps administration of the program within its jurisdiction has an excellent track record with few challenges to its application.

50 PERCENT BALANCE OF PAYMENTS EVALUATION FACTOR

The 50% Balance of Payments evaluation factor was added by the Department of Defense to its Buy American Program as a temporary measure in response to balance of trade concerns. It is not required by the Buy American Act or its implementing Executive Order. The factor applies only to offers involving end products of a non-qualifying country, i.e., a country that is not a defense cooperation country, a country without a Foreign Military Sales/Offset agreement with the United States, or a NATO country which does not have a specific agreement with the U.S. insofar as its goods are concerned. It applies only to direct purchases by the Army Corps of Engineers and does not apply to construction equipment or material acquired by Civil Works construction contractors. Stringent Buy American mandates apply to purchases by Federal construction contractors.

BACKGROUND OF PROPOSED RULE CHANGE

In 1984, the Office of the Assistant Secretary of the Army for Research, Development and Acquisition, as a result of an error made in a field contracting office which gained high-level visibility, proposed that the 50% Balance of Payments evaluation factor, as applied to Army Corps of Engineers Civil Works projects, be rescinded to simplify the procurement process and assure consistent and equitable treatment. The Buy American program, with all of its facets and features, would still apply to Army Corps of Engineers procurements. The proposed rule change would also make the Civil Works procurements similar to those of non-defense agencies.

At about the same time the rule change was initially proposed, Congress and the Administration were developing a new charter for the water resources program. This effort culminated in the enactment of the Water Resources Development Act of 1986, Public Law 99-662. This Act shifts the focus from what was largely a Federal program to a joint-venture partnership with non-Federal project sponsors who share in the costs of project implementation. It underscores the importance of the Army Corps of Engineers providing as cost efficient projects as possible. The proposed rule change could, in specific circumstances, yield a lower cost for a project. Therefore, the Assistant Secretary of the Army for Civil Works supported the initiative to change the rule.

On April 16, 1987, the Defense Acquisition Regulatory Council placed an announcement for public comment in the Federal Register proposing a change to the 50% Balance of Payments evaluation factor rule as applied to Army Corps of Engineers Civil Works projects. The comment period of 60 days was extended an additional 60 days, until August 15, 1987, in response to public and Congressional interest in the proposal.

IMPACT OF PROPOSED RULE CHANGE

In further response to comments on the proposed rule change, we attempted to quantify its impact. In Fiscal Year 1987, the Army Corps of Engineers had over 400,000 procurement actions, totaling approximately $1.8 billion. Of this, only $18 million was for purchase of supplies that could possibly be affected by the proposed rule change. There are a large number of industries represented, and it was felt that the impact of the proposed rule change would be insignificant. For example, in Fiscal Year 1987, 200,000 tons of steel was acquired for Army Corps of Engineers construction projects, but less than 2,000 tons was by direct purchase potentially impacted by the proposed rule change. This was considered an insignificant amount for an industry which annually produces 90,000,000 tons.

While the economic burden on an industry-wide basis is insignificant, we recognize that there may be a specific adverse impact upon an individual firm if the rule were changed.

In January of this year, after giving consideration to all the issues, comments, and expressions of concern, the Department of the Army recommended that the rule be left intact. On May 4, 1988, the Defense Acquisition Regulatory Council decided to withdraw the proposal and leave the current regulations unchanged. A notice to this effect will be published in the Federal Register.

The proposed rule change regarding the 50% Balance of Payments evaluation factor is now a closed issue from our perspective. We are not going to propose to change the rule.

As a concluding comment, Mr. Chairman, I would note that that the process for changing procurement regulations works well. In this specific case, there are arguments for both keeping and changing the 50% evaluation factor rule. After a period of public comment, and after all of the issues and concerns that were identified were considered, a decision was made not to proceed with the rule revision.

Mr. Chairman this completes my statement. We are prepared to respond to any questions that you or members of the Subcommittee might have.

Mr. **Oberstar**. Well, thank you for that explanation.

The Corps of Engineers programs—the water resources, the inland waterway, the navigation and flood control programs are going to be a permanent part of the American landscape as they have been for the past 200 years or more. We are a Nation principally because we have been a seafaring people, dependent internally as well on water navigation for commercial and other purposes. Most of America's major cities are cities because they are ports. Since the earliest time of this country we have been a Nation dependent upon the water; 75 percent of our population still lives along the water. Corps' programs are going to continue to have support in Congress and continue to have major impact on the domestic economy.

So the matter of standardization of equipment, parts, and procedures, is one that will be with us for a long time in the future. I encourage the Department to think positively and creatively about a standardization process. Consult with the industry and with this committee. We want to be helpful, we want to be cooperative, and we want the best result. And I think you've gotten the impression that Members of Congress care very deeply about Buy America, about preserving our industrial base. I'm sure you are familiar with the report of the Congressional Commission on Merchant Marine and Defense. I serve on the Merchant Marine and Fisheries Committee as well, and we're very concerned about erosion of our shipbuilding base and erosion of U.S. capability in foreign commerce.

Members of Congress care very deeply and they're going to be watching this matter of Buy America very closely in the future. I appreciate your sensitivity and understanding of the concerns, and the openness and candor with which you responded to questions, especially that that near-fatal mistake has been avoided.

We will look forward to your responses to the questions that have been asked.

The Chair asks unanimous consent that Mrs. Bentley and other members of the committee may submit questions to the witnesses, and those questions and responses will be received for the record.

The Chair would also like to reference the correspondence from Patterson Pump Company to the committee expressing its concern:

> If the proposed changes regarding 50 percent domestic content were in effect at the time the contracts were awarded, we most likely would not have received the contracts. Our company is relatively small, employing approximately 200 people. The type of work these contracts represent is vital to the success of our company.

This is just one further example of the significance of the vast reach of Buy America and the programs of the Corps of Engineers. We will enter that letter in the committee hearing record at the appropriate point.

[The letter referred to follows:]

Patterson

May 9, 1988

The Honorable James Oberstar
Dirksen Senate Office Bldg. 8
2351 Rayburn House Office Bldg.
Washington, D.C. 20510

RE: U.S. Army Corps of Engineers - Procurement Policy
DFARS 25.105

Dear Congressman Oberstar:

Patterson Pump Company requests your assistance in preventing a change to the existing Procurement Regulations of the Army Corps of Engineers. This matter was addressed previously with you in Washington on February 25, 1988.

Our Company is a major supplier of pumping equipment for the Public Works Section of the Army Corps of Engineers. The attached list shows the projects we have completed in the past. (Only direct supply contracts are listed.) These contracts total $9,767,886.65.

If the proposed changes regarding the 50 percent domestic content were in effect at the time these contracts were awarded, we would most likely not have received the contracts.

Our Company is relatively small, employing approximately 200 people. The type of work these contracts represent is vital to the success of our Company. There is adequate competition now with Domestic Pump Suppliers; the passage of this change will adversely affect not only our Company, but all Domestic Pump Suppliers as well. Our suppliers of motors, engines, castings and basic

PATTERSON PUMP COMPANY / A Subsidiary of Banner Industries, Inc.
PUMP DIVISION / PROCESS EQUIPMENT DIVISION / VALVE DIVISION
Box 790 / Toccoa, Georgia 30577 / (404) 886-2101 / TWX 810-786-1360 PATT PUMP TOCA

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The Honorable James Oberstar
U.S. Army Corps of Engineers
May 9, 1988.

Patterson

materials such as steel and bronze will also be affected adversely by this proposed change.

We urge your support to defeat this change in Procurement Policy.

Regards,

PATTERSON PUMP COMPANY

Randall Jarrett, P.E.
Vice President
Sales & Marketing

RJ/mpt

cc: Len Williams - Bethlehem Steel Corporation
Senator Sam Nunn
Congressman Ed Jenkins
File

Enclosure

AXIAL & MIXED FLOW
INSTALLATION LIST
Contract No. and Amounts

82BT6243-5 A42 U.S. Army Eng. District - Savannah Contract No. DACW60-82-C0006	TOTAL AMOUNT	$ 596,121.00
77BT2526-27-G30 Corps of Engineers - Evansville, Indiana Pigeon Creek Station Contract No. 27-77-B-0066 - also - 77BT2528-30-G30 Corps of Engineers - Evansville, Indiana Dresden Street Station Contract No. DACW 27-77-B-0066	TOTAL AMOUNT	$ 212,800.00
77BT2698-99-G36 Corps of Engineers Drinkwater Pumping Station Charleston, Missouri Contract No. DACW66-77-C-0150	TOTAL AMOUNT	$ 321,295.82
78BT2959-61-G30 Corps of Engineers Riverport Pumping Plant Southwest Jefferson County Louisville, KY Contract No. DACW27-78-C-0049	TOTAL AMOUNT	$2,769,808.07
78BT2930-4-G77 Corps of Engineers New Orleans District Teche Vermilion Water Pumps Krotz Springs, Louisiana Contract No. DACW29-78-C-0133	TOTAL AMOUNT	$1,441,708.29
78BT2962-64-G48 Corps of Engineers Lower Mill Creek Pumping Station Jefferson County Contract No. DACW27-78-C-0049 - also - 78BT2965-67-G72 Upper Mill Creek Pumping Station Southwest Jefferson County Louisville, KY Contract No. DACW27-78-C-0049	TOTAL AMOUNT	$2,769,808.07

AXIAL & MIXED FLOW
INSTALLATION LIST
Contract No. and Amounts

79BT3526-27-G39
Corps of Engineers
Cinque Hommes Pumping Station
St. Louis, Missouri
Contract No. DACW43-79-C-0030
- also -
79BT3528-29-G39
Corps of Engineers
Jones Cutoff Pumping Station
St. Louis, Missouri
Contract No. DACW43-79-C-0030

TOTAL AMOUNT $ 534,670.38

79BT3968-70-G42
Corps of Engineers
Ohio River Division
Main Street Station
Wilder, Kentucky
Contract No. DACW27-79-C0113
- also -
79BT3971-73-G48
Corps of Engineers
Ohio River Division
McKinney Street Station
Dayton, Kentucky
Contract No. DACW27-79-C0113

TOTAL AMOUNT $1,121,675.02

TOTAL CONTRACT AMOUNTS......$9,767,886.65

Mr. **Oberstar**. Again, the Chair would like to express his appreciation to the witnesses for participating, for their contributions to today's hearing, and particularly to the gentleman from Pennsylvania, Mr. Clinger, for his very studious and thoughtful and supportive contribution to the overall series of hearings on Buy America. The gentleman has provided a scholarly and thoughtful approach and has been a very active and vigorous participant in these hearings.

The subcommittee stands adjourned.

[Whereupon, at 2:10 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

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